

Applicant Details

First Name	Jamie
Last Name	Brensilber
Citizenship Status	U. S. Citizen
Email Address	jlb2323@columbia.edu
Address	<div> <div>Address</div> <div> <div>Street</div> <div>345 East 94th St., Apt. 29C</div> <div>City</div> <div>New York</div> <div>State/Territory</div> <div>New York</div> <div>Zip</div> <div>10128</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	5167125533

Applicant Education

BA/BS From	University of Pennsylvania
Date of BA/BS	May 2017
JD/LLB From	Columbia University School of Law
	http://www.law.columbia.edu
Date of JD/LLB	May 20, 2020
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Columbia Journal of European Law
Moot Court Experience	Yes
Moot Court Name(s)	European Law Moot Court

Bar Admission

Admission(s)	New York
--------------	----------

Prior Judicial Experience

Judicial Internships/Externships	No
----------------------------------	----

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Wilson, Scott
scott.wilson@us.dlapiper.com

Harbeck, Dorothy
daharbeck@aol.com

Bradford, Anu
abradf@law.columbia.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Jamie Brensilber
516-712-5533
Jlb2323@columbia.edu

345 East 94th Street, Apt 29C
New York, NY 10128

June 07, 2023

The Honorable Judith McCarthy
Charles L. Brieant, Jr. United States Courthouse
300 Quarropas Street, Room 434
White Plains, NY 10601-4150

Dear Judge McCarthy:

I am a litigation associate at DLA Piper (US) LLP and a 2020 graduate of Columbia Law School. I write to apply for a clerkship in your chambers beginning in the 2024 term or any term thereafter.

Strong research and writing skills, dedication, and diligence are strengths I would bring to this position. During my time at DLA Piper, I was entrusted with writing motions and an appellate brief in an art law case, various motions and replies in insurance cases, and a summary judgment brief in a financial services case, among others. I have researched unique questions of law in jurisdictions across the country and internationally, while advising multinational companies and small organizations alike. These experiences have honed my strong research and writing skills and taught me how to address different clients' needs.

Enclosed please find a resume, transcript, and writing sample. Also enclosed are letters of recommendation from Professor Anu Bradford (212-854-9242, abradf@columbia.edu); Scott Wilson, a partner at DLA Piper (212-335-4915, scott.wilson@us.dlapiper.com), and Judge Dorothy Harbeck (daharbeck@aol.com).

Thank you for your consideration. Should you need any additional information, please do not hesitate to contact me.

Respectfully, Jamie Brensilber

JAMIE BRENSILBER

345 East 94th St., Apt. 29C, New York, NY 10128 | (516) 712-5533 | jlb2323@columbia.edu

EDUCATION

Columbia Law School, New York, NY

J.D., Certificate in Global Business Law and Governance, received May 2020

Honors: James Kent Scholar (2019-2020), Harlan Fiske Stone Scholar (2018-2019)

Activities: *Columbia Journal of European Law*, Articles Editor
European Law Moot Court, Coach
Legal Aid Society Immigration Law Unit, Externship
Queens District Attorney's Office Domestic Violence Bureau, Externship
CSIL, Speaker Series Committee Chair
Jewish Law Students Association, Treasurer

University of Pennsylvania, Philadelphia, PA

B.A., *summa cum laude*, received May 2017

Majors: Political Science & French and Francophone Studies

Honors: Phi Beta Kappa, Pi Sigma Alpha, Pi Delta Phi, John Marshall Pre-Law Honor Society

Theses: "Mobilization in the Paris Commune of 1871" (Political Science)
« Les représentations de la Commune de Paris » (French)

Awards: Leo S. Rowe Prize (for best thesis in comparative or international politics)
Best Honors Thesis in French & Francophone Studies

Activities: Penn Band
Penn Speaks for Autism, Vice President
Francophone Community Partnership, Founding Member

Study Abroad: Columbia-Penn Program in Paris at Reid Hall, Paris, France (Fall 2015)

EXPERIENCE

DLA Piper, LLP, New York, NY

Summer 2019, 2021-present

Defended clients in complex commercial litigations, commercial arbitrations, and art litigations in multiple jurisdictions. Researched and drafted motions to dismiss, motions for summary judgment, and appellate brief. Assisted multinational corporations with global investigations conducted by the D.O.J. and S.E.C. Represented asylum applicants before U.S.C.I.S.

New York State Office of the Attorney General, Mineola, NY

Summer 2018

Conducted legal research for and drafted written answers to petitions for Article 78 actions and motions to dismiss. Drafted affidavits and memoranda. Assisted attorneys in preparation for conferences.

Proskauer Rose LLP, New York, NY

Summer Paralegal

Summer 2016

Conducted research for SIJS pro bono cases, organized trial materials for IP case, sorted through attorney work product for high-profile entertainment case, prepared and reviewed binders for court.

Nassau County District Attorney, Mineola, NY

Intern, District Court

Summer 2014

Organized court documents, prepared statistics reports and graphs on Excel, maintained calendar in court for Adolescent Diversion Program, researched cases, and prepared voluntary discovery.

LANGUAGE SKILLS: French (fluent)

INTERESTS: French language and culture, music performance, historical fiction

June 07, 2023

The Honorable Judith McCarthy
Charles L. Brieant, Jr. United States Courthouse
300 Quarropas Street, Room 434
White Plains, NY 10601-4150

Dear Judge McCarthy:

I write in support of the clerkship application of my colleague Jamie Brensilber, who is a litigation associate at my law firm, DLA Piper LLP (US). I am a litigation partner in the firm and previously was a partner at Boies Schiller Flexner LLP. Earlier in my career, I served in government as Senior Advisor and Special Counsel to the New York Attorney General.

I have worked closely with Jamie and supervised her work directly on a range of cases since she joined the firm in 2021. She is exceptionally bright, and a talented and diligent researcher with an analytical and curious mind. Her writing is clear, cogent and well organized—more so than most of her peers. Even as a first-year associate, I had her take the lead in briefing a successful motion to dismiss conversion and declaratory judgment claims filed in New York State Supreme Court against a museum client concerning an allegedly stolen 18th century work in the museum's permanent collection. She conducted all of the legal research, and the trial court adopted her arguments almost verbatim in its decision. Jamie also led the briefing on the appeal, where we were again successful.

Jamie is a self-starter whose intellectual curiosity and perennial enthusiasm for complex legal issues and assignments makes it a pleasure to collaborate with her. She is also very pleasant to work alongside, and well regarded by everyone who works with her. She is the type of person and lawyer who treats everyone from the senior partner to administrative staff with the same collegiality, respect and courtesy, which is an additional reason why I believe she would be very successful as a clerk.

Not surprisingly, Jamie has all the conventional academic honors. She graduated summa from the University of Pennsylvania, and was a James Kent Scholar and Harlan Fiske Stone Scholar at our alma mater, Columbia Law School. She also has a working knowledge of French, which led us to collaborate on the pro bono representation of a French-speaking asylum seeker from Burkina Faso who is a survivor of female genital mutilation.

It has been several years since I have recommended an associate for a clerkship, which reflects the very high regard in which I hold Jamie. I have no doubt that Jamie will have a very successful career as a litigator and would make a first-rate addition to your chambers. She has my strongest recommendation.

If I may provide any additional information in support of Jamie's application, please do not hesitate to contact me at (212) 335-4915 or scott.wilson@us.dlapiper.com.

Respectfully submitted,

/s/

Scott R. Wilson
Partner
DLA Piper LLP (US)

Scott Wilson - scott.wilson@us.dlapiper.com

June 07, 2023

The Honorable Judith McCarthy
Charles L. Brieant, Jr. United States Courthouse
300 Quarropas Street, Room 434
White Plains, NY 10601-4150

Recommendation for Jamie Lauren Brensilber—Judicial Clerkships

Dear Judge McCarthy:

I am writing to wholeheartedly recommend Jamie Lauren Brensilber, who was a student of mine at Columbia Law School (CLS) in 2018, for a clerkship with your court. She was a student in my immigration trial skills class in the 2018 fall semester. This class uses U.S. asylum cases as hypotheticals for students to develop and refine trial skills. The course curriculum requires students to work together in a workshop environment and to critique each other. It has a writing component as well. Ms. Brensilber rapidly became well versed in immigration law, through both my class and her research. I understand that this course sparked her interest in asylum cases which in turn inspired her to pursue an externship the following semester at the Legal Aid Society's Immigration Law Unit. Before graduating from CLS, when she was a summer associate at DLA Piper, she worked on pro bono immigration matters and did substantial research on domestic violence in West African countries, which is a very current issue in international migration. Further, as a full-time associate at DLA Piper, she has donated her skill and time as an attorney on affirmative asylum cases before USCIS. These were for Francophone West Africans and Ms. Brensilber is fluent in French.

She is currently at DLA Piper in their litigation practice in New York. I understand she has worked on complex commercial litigations, represented a museum in a few art cases, assisted with insurance litigations, and helped defend pharmaceutical and medical device companies in government-facing investigations.

She has also served as a mentor to summer associates, helped with recruiting, and planned several events for the women lawyers' group. This energetic approach to her practice is a further step in what I observed in her as a student at CLS-- I am aware that while carrying a full course load at CLS, she also completed an Immigration Law Externship at the Legal Aid Society. Further, she was also both a competitor and coach in the European Law Moot Court Competition. In her last semester of law school, she studied abroad with the Global Alliance Program in Paris. She can balance many projects at one time; she certainly has a superb grasp of the complex and developing issues in the field and she has an easy going and unflappable demeanor.

She managed a complex and rigorous academic schedule in the CLS program; yet she was always prepared in class and always willing to volunteer for extra work. She truly is grace under pressure. She exhibits superlative work ethic. She works hard and works well. Her work as an undergraduate at University of Pennsylvania is equally as impressive and her choice of a double thesis (one written in English and the other written in French) on the Paris Commune of 1871 demonstrates her desire to dig into thorny historical events and dismantle them. I was very impressed in our trial skills class when I called upon Ms. Brensilber to get up and give a five-minute speech extemporaneously with no warning or preparation and she spoke extremely well and engagingly on socialism in the France in the 1870s.

In my interactions with Ms. Brensilber, I have observed that she can always be relied upon to analyze legal issues with skill and to analyze factual issues with a rare combination of critical analysis and humane compassion. It is because of her enthusiasm for law, her professional courtroom demeanor, her accomplished researching and writing ability, as well as her easy-going personality that I support her application to become a judicial law clerk. She is dedicated, eager, hard-working, and a strong writer. In her assignments in my class, Ms. Brensilber demonstrated the ability to write clearly and concisely. In her time at DLA, she has developed strong legal research skills and have grown even more confident in legal writing.

I cannot endorse Ms. Brensilber enough. She has the temperament, the knowledge, the demeanor and the energy to be an excellent law clerk. Although I write this recommendation in my capacity as her former professor, as U.S. immigration judge myself, I am very impressed with her skills, her attitude, and her ability to work on a team.

Very truly yours,

Hon. Dorothy A. Harbeck
dh2940@columbia.edu

Dorothy Harbeck - daharbeck@aol.com

June 07, 2023

The Honorable Judith McCarthy
Charles L. Brieant, Jr. United States Courthouse
300 Quarropas Street, Room 434
White Plains, NY 10601-4150

Dear Judge McCarthy:

I am writing to you in support of Jamie Brensilber and her application for a clerkship with you.

I know Jamie in my capacity as a Professor at Columbia Law School. I taught Jamie European Union Law in the fall of 2018. I also supervised her note focusing on the intersection between EU counterterrorism and privacy policies. In those contexts, I got to know her analytical capabilities as well as over-all academic potential well. I therefore feel confident and delighted in writing on her behalf.

Jamie is a bright, highly motivated, and intellectually curious individual. She was among the strongest students in my European Union class, earning a grade of A-. Jamie's class participation similarly showed that she understands even the most complicated legal issues, and she is always immaculately well prepared to address them. She was consistently one of the most reliable students that I called on when I needed to move the conversation forward and make sure that the class benefits from a nuanced legal analysis. Her note similarly earned her an A-, demonstrating that she is a skillful researcher and effective writer. She has the eye for important topics and the ability to connect those topics to broader legal debates and scholarly frameworks.

In addition to her academic abilities and notable work ethic, I would also like to highlight Jamie's professional demeanor and social grace. In the classroom setting, Jamie was capable of defending her arguments, yet always respectful of the views of her fellow students.

I am confident that Jamie's intellectual excellence, resourcefulness, analytical sophistication and dedication to strive will make her an excellent law clerk. I therefore strongly support her application and remain available to answer any questions you might have.

Sincerely,

Anu Bradford

Anu Bradford - abradf@law.columbia.edu

June 1, 2023

To whom it may concern:

This brief was submitted in an affirmative asylum application before the Newark Asylum Office. As of the date of writing, the case remains pending before the asylum office. In the interest of protecting the client's privacy, I have redacted all names and identifying information. The brief has not been substantially edited by anyone other than myself.

Thank you.

Jamie Brensilber

**UNITED STATES DEPARTMENT OF HOMELAND SECURITY
UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICE
NEWARK ASYLUM OFFICE**

In The Matter of:)
)
Application for Asylum,)
of [REDACTED])
)
)
)
_____)

File No: A# [REDACTED]

**BRIEF IN SUPPORT OF APPLICATION FOR ASYLUM, WITHHOLDING OF
REMOVAL, AND RELIEF UNDER THE CONVENTION AGAINST TORTURE**

Ms. [REDACTED] (“[REDACTED]”), by and through undersigned *pro bono* counsel, respectfully submits this brief in support of her Application for Asylum, Withholding of Removal, and Relief under the Convention Against Torture.

[REDACTED]’s application demonstrates she qualifies for asylum under Sections 101(a)(42)(A) and 208 of the Immigration and Nationality Act (“INA”). She is outside her country of origin and is unwilling or unable to return to it. [REDACTED] is a citizen of Burkina Faso and fled to the United States in 2016 because she experienced persecution in the form of female genital mutilation (“FGM”) and domestic violence due to her inability to have children after being excised. She has a genuine and well-founded fear based on her experience that the persecution she suffered at the hands of her in-laws and her husband would continue and escalate if she were forced to return to Burkina Faso. Her husband’s family has persecuted her in the past – and likely would persecute her in the future – on account of her membership in a particular social group (Burkinabe women who were excised and cannot have children), on account of her political opinion (opposition to FGM), and on account of her conversion to Christianity. She is unable to avail herself of the protection of Burkina Faso because the government and police have proven unable to protect their citizens from FGM and domestic violence.

Although [REDACTED] initially filed her asylum application a few days outside of the one-year bar, she should be granted an exception for extraordinary circumstances. Directly prior to the filing of her application, [REDACTED] was very ill with severe anemia, uterine fibroids, and painful menstrual cycles. *See* Affidavit of [REDACTED] ([REDACTED] Aff.) ¶¶ 28-30, 65, Ex. B; *see also* Medical Records, Ex. K, pp. 1, 5; *see also* Declaration of Dr. [REDACTED] ([REDACTED] Dec.), ¶ 10, Ex. M. She suffered excessive bleeding, fainted, and had to be brought to the hospital. *See* [REDACTED] Aff. ¶ 29-30, Ex. B; *see also* Medical Records, Ex. K, pp. 4-5. [REDACTED] had been ill for some time and unable to submit her application earlier. Still, [REDACTED] mailed her application before the deadline, but the United States Citizenship and Immigration Services

(“USCIS”) only received it three days after the one-year bar, which should be considered reasonable under the circumstances.

██████████ has attached an affidavit (██████████ Aff. Ex. B), country conditions documents (Ex. O-BB), and supporting declarations in support of her application for relief (Ex. F-H, M-N).

I. STATEMENT OF FACTS

A. ██████████ is a victim of female genital mutilation, a traumatizing experience.

In or about 1990, ██████████ experienced the trauma of FGM at about ten years old. *See* ██████████ Dec. ¶ 13, Ex. M. ██████████’s mother brought her on vacation to the village of Boromo, where she had previously vacationed. *See* ██████████ Aff. ¶ 20, Ex. B. ██████████ was not afraid, as she had spent time in the village before and was able to play with her cousins and friends. *Id.*

One day, ██████████ was playing outside with her cousins and friends, when some older women started calling the girls inside one by one. *See* ██████████ Aff. ¶ 21, Ex. B. She did not know why they were being called inside, but when it was her turn, ██████████ had a bad feeling. Women in her family had never told her about female genital mutilation, as it was a taboo subject. ██████████ tried to run away, but the women caught her and forced her inside. *Id.* They thrust her on a mat on the ground and held her down. ██████████ saw the knife and the expression on the mutilator’s face, and her fear heightened. ██████████ thought the women were going to kill her. *Id.* She fought back against the women restraining her, telling them they were hurting her. The women laughed, saying what would happen next would be even more painful. *See* ██████████ Aff. ¶ 22, Ex. B. When the knife touched her skin and the excision began, ██████████ could not believe the excruciating pain. ██████████ was cut without anesthesia, a painful and terrifying experience. She screamed, but at one point, she could not scream anymore. Since she continued to fight and squirm, the knife slipped and cut more than was intended. After they were done, the women cleaned her up and placed a piece of cloth over her skin. *See* ██████████ Aff. at ¶ 24, Ex. B.

The women took her to a room where her cousins and friends were sitting quietly because the women threatened them if they cried. *See* ██████████ Aff. ¶ 24, Ex. B. ██████████ continued to bleed more than the other girls, so the women had to take her to a nearby free clinic. At the clinic, the doctors put alcohol on her wound, which burned but stopped the bleeding. *See* ██████████ Aff. ¶ 25, Ex. B.

When ██████████ returned to her mother, she would not speak to her mother, whom she considered complicit in her excision. However, she would later learn that her mother had suffered to protect ██████████ younger sister and had little choice in the matter. *See* ██████████ Aff. ¶ 26, Ex. B. ██████████ is a member of the Wala tribal group, which practices excision. *See* ██████████ Aff. ¶ 11, Ex. B. Thirty years after her excision, ██████████ is still traumatized by the experience and will never be able to forget the terror she felt at the time.

For years afterward, ██████ would experience side effects of her excision. When she married, she was terrified of intercourse and then eventually experienced no enjoyment from it. *See* ██████ Aff. ¶ 32, Ex. B. After ten years of marriage, she was unable to have children, for which her ex-husband blamed her. *See* ██████ Aff. ¶ 33, Ex. B. Her ex-husband even threatened to have her excised again, suggesting her infertility may have been caused by an incomplete excision. *See* ██████ Aff. ¶ 35, Ex. B. The experience of being a victim of FGM traumatized and permanently scarred ██████, physically and emotionally. It destroyed her marriage and her perceived value in Burkinabe society, along with her ability to have children.

B. ██████ has suffered physical and verbal abuse by her husband and his family.

█████'s husband and in-laws have subjected her to both physical and verbal violence on account of her inability to have children. In 2006, ██████ married ██████, a man about fifteen years her senior who did not treat her kindly. *See* ██████ Aff. ¶ 15, Ex. B. As a result of her excision, ██████ was hesitant to be intimate with her husband. Over the course of ten years of marriage, ██████ was never able to have a child. *Id.* Her husband and his family blamed her for this fault, as in Burkina Faso, women are expected to have children to have value in society. *See* ██████ Aff. ¶¶ 15, 33, Ex. B.

In addition, ██████ brother-in-law struck her for her alleged failings and tried to get her to leave. *See* ██████ Aff. ¶ 44, Ex. B. On several occasions, ██████ mother-in-law called her worthless for not producing a child and said she served no purpose. She even threw water on ██████. *See* ██████ Aff. ¶ 45, Ex. B. While ██████ husband was aware of this abuse, he did not act to protect her, saying he believed it was normal to hurt your women for their failings. *See* ██████ Aff. ¶ 44, Ex. B. He also gave his brother permission to kill her. *See* ██████ Aff. ¶ 44, Ex. B. Similarly, ██████ sisters-in-law repeatedly mocked her, saying she was not worthy of their family and should leave. When ██████ tried to return to her family's house, her own mother turned her away, saying she belonged to another family now that she was married. *See* ██████ Aff. ¶ 45, Ex. B. ██████ had nowhere to turn, and after her mother-in-law literally chased her out of the house a few times, she resorted to sleeping under a tree outside. *See* ██████ Aff. ¶ 43, 45, Ex. B.

█████ in-laws also deprived her of food in punishment for her failure to produce a child. She had to buy food outside of the house with the money she earned working as a tailor. *See* ██████ Aff. ¶ 46, Ex. B. On a few occasions, it seemed to ██████ that her husband was about to hit her, so she would run outside to escape. Having nowhere to turn and no life as a woman with no children, ██████ prayed for a way out and a way to safety. *See* ██████ Aff. ¶ 48, Ex. B.

In or about 2008, ██████ tried to kill herself by swallowing pills. *See* ██████ Aff. ¶ 49, Ex. B. She went to the courtyard to get some water for the pills, but she fell and broke the glass she carried. A kind neighbor heard the glass break and came by to see if she were okay. *Id.* ██████ took the kind neighbor and the glass breaking as a sign that she was not supposed to die and that she had to fight for her life. *Id.* When her in-laws eventually kicked her out, ██████ brother-in-law threatened to kill her if she returned. *See* ██████ Aff. ¶ 51, Ex. B.

C. ██████ fled Burkina Faso to escape the abuse and entered the United States on May 12, 2016.

In May 2016, ██████ fled Burkina Faso to escape the abuse from her husband and his family and to visit her sister in the United States. See ██████ Aff. ¶ 64, Ex. B. She departed Burkina Faso on May 11, 2016 and landed in New York on May 12, 2016. *See id.*

During her time in the United States, ██████ has found peace and safety. She has converted to Christianity, a religion she feels aligns better with her values but would lead to persecution if she returned to her Muslim region. See ██████ Aff. ¶¶ 54-56, Ex. B. ██████ knows that if she returns to Burkina Faso, her ex-husband and his family would hunt her down and beat or poison her as punishment for trying to find safety. See ██████. ¶¶ 62-63, Ex. B. She would be shunned for her conversion to Christianity and for being an unmarried woman who cannot have children. See ██████ Aff. ¶¶ 71, 75, Ex. B. Wherever she went in Burkina Faso, ██████ would be persecuted on account of her inability to have children, her opposition to FGM, and her religion.

II. LEGAL ARGUMENT

A. ██████ should be granted asylum in the United States.

██████ is a refugee who qualifies for asylum in the United States. Under Section 101(a)(42)(A) of the Immigration and Nationality Act (“INA”), a “refugee” is

“any person who is outside any country of such person’s nationality...and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”

8 U.S.C. § 1101(a)(42)(A). While in the United States, ██████ is outside her country of nationality, Burkina Faso, and she is unable and unwilling to return to and unable to avail herself of the protection of Burkina Faso due to past persecution and a well-founded fear of future persecution on account of her religion, political opinion, and membership in a particular social group.

Eligibility for asylum can arise from past persecution or a well-founded fear or likelihood of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. See *Ramsameachire v. Ashcroft*, 357 F.3d 169, 178 (2d Cir. 2004). “Private acts can [] constitute persecution if the government is unable or unwilling to control such actions.” *Pan v. Holder*, 777 F.3d 540, 543 (2d Cir. 2015). Further, a “showing of past persecution gives rise to a rebuttable presumption of a well-founded fear of future persecution.” *Id.* See also *Shi Liang Lin v. U.S. Dep’t of Just.*, 494 F.3d 296, 300-301 (2d Cir. 2007), and 8 CFR 1208.13(b)(1) (“An applicant who has been found to have established such past persecution shall also be presumed to have a well-founded fear of persecution on the basis of the original claim.”).

██████ meets these requirements and is entitled to asylum. She was persecuted in Burkina Faso on account of her membership in a particular social group and her political opinion. ██████ faced persecution due to her membership in the particular social group of Burkinabe women who were excised and who cannot bear children. She also expressed opposition to FGM, which led to her persecution while living in Burkina Faso. This past persecution creates the rebuttable presumption of a well-founded fear of future persecution. If she were to return to Burkina Faso, she would still be opposed to FGM, which her husband's family already knows, and she would still be a Burkinabe woman who was excised and is unable to bear children. It would be extremely difficult for ██████ to remarry and impossible to have children, so she would continue to face persecution if she were to return. Lastly, since ██████ has converted to Christianity, her family and her community would persecute her on the basis of her religion.

The Burkinabe government is unable and unwilling to protect ██████. It is impossible and unreasonable for her to relocate within Burkina Faso because she would be shunned for being an unmarried woman without children and because she would still be in danger of her in-laws' retribution. Her ex-husband has also threatened to tell everyone she was sterile, rendering her unmarriageable. ██████ in-laws would hunt her down and seek to beat or poison her in retaliation for not producing children, for escaping to the United States, and for converting to Christianity. Returning ██████ to Burkina Faso would place her life in danger.

1. ██████ Has Suffered Severe Past Persecution on Account of Her Membership in the Particular Social Group of Burkinabe Women Who Were Excised and Cannot Bear Children.

██████ has faced persecution on account of her membership in the particular social group of Burkinabe women who were excised and cannot bear children. The Board of Immigration Appeals ("BIA") has defined persecution under the INA as a "threat to life or freedom of, or the infliction of suffering upon, those who differ in a way that is regarded as offensive" and as encompassing behavior broader than threats to life or freedom. *See Matter of Acosta*, 19 I. & N. Dec. 211, 222 (B.I.A. 1985), *overruled on other grounds*. The Second Circuit has previously held that persecution includes physical and sexual abuse, as well as threats. *See Vumi v. Gonzales*, 502 F.3d 150, 152 (2d Cir. 2007). ██████ experienced this type of past persecution during her time in Burkina Faso.

██████ in-laws persecuted her due to her inability to have children. Burkinabe society finds women who cannot have children as "other," and there is a stigma around infertility. *See Merck Foundation calls for action together with 13 African First Ladies and 27 Ministers to Build Health Capacity*, Business Insider Africa (June 22, 2021), Ex. Z. Women who do not have children will often be threatened or beaten. *See Amnesty Int'l, Married at 13 – thousands of girls in Burkina Faso denied a childhood against their will* (May 18, 2020), Ex. AA. Her in-laws ridiculed and violently struck her for her inability to produce children. They called her worthless, kicked her out of the house, and forced her to sleep outside. ██████ husband gave permission to his brother to kill her, saying it was within his right for her lack of children. *See* ██████ Aff. ¶ 44, Ex. B. Her husband also taunted her and threatened to have her excised a second time. *See* ██████ Aff. ¶¶ 43, 35, Ex. B. When ██████ in-laws ultimately kicked her out of the house, ██████ recalls her brother-in-law threatening to kill her if she ever returned. *See* ██████ Aff. ¶ 51, Ex. B. She experienced threats and physical abuse on the basis of her

particular social group of excised Burkinabe women who could not have children. Her in-laws ridiculed her and threatened her life, and they continued to pose a threat to her even after she fled Burkina Faso. [REDACTED] father-in-law is a powerful religious leader who has the resources to find her and seek retaliation. Given the past persecution, [REDACTED] would face a threat to her life and safety if she were forced to return to Burkina Faso.

The BIA has found that membership in a particular social group requires three characteristics: “(1) immutability, meaning that members of the group must ‘share a common, immutable characteristic,’ (2) particularity, meaning that the group must ‘be discrete and have definable boundaries,’ and (3) social distinction, meaning that the group must ‘be perceived as a group by society.’” *Ordonez Azmen v. Barr*, 965 F.3d 128, 134 (2d Cir. 2020) (internal citations omitted).

a. [REDACTED] social group is based on immutable characteristics.

To qualify as a social group, members of the group must “share a common, immutable characteristic.” *Matter of Acosta*, 19 I. & N. Dec. at 233, *rev’d on other grounds* 19 I. & N. 439, 441 (B.I.A. 1987)); *see also I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987). The common characteristic of the group must be one that the members of the group “either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.” *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 231 (B.I.A. 2014). The social group here, Burkinabe women who were excised and cannot bear children, is not capable of change and shares a common, immutable characteristic. [REDACTED] cannot change her country of birth, her gender, or her history of excision. The Circuit courts have recognized gender as the basis of establishing a particular social group. *See Mohammed v. Gonzalez*, 400 F.3d 785, 797 (9th Cir. 2005) (finding females as a valid social group in the case of female genital mutilation); *see also Matter of A-R-C-G-*, 26 I&N 388, 392 (B.I.A. 2014) (finding that gender can be part of a particular social group, depending on the facts of the individual case).¹ While fertility treatments in a first world country may help her have children, they are very costly, and she would likely not be able to continue these in Burkina Faso. Further, fertility treatments do not always work. She would not be able to change the fact that she has no children so far and has struggled to become pregnant. Thus, members of the group of Burkinabe women who were excised and cannot bear children share a common, immutable characteristic.

b. [REDACTED] social group is socially distinct.

[REDACTED] social group is socially distinct because it is “perceived as a group by society.” *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 240 (B.I.A. 2014). The social distinction requirement weighs whether “those with a common immutable characteristic are set apart, or distinct, from other persons within the society in some significant way.” *Id.*, at 238. This requirement overlaps with the particularity requirement, as both focus on the applicant’s fact-specific claims. *See Ordonez Azmen v. Barr*, 965 F.3d at 134-135. Women over a certain age without children are viewed as “other” in Burkina Faso. *See Merck Foundation*, Ex. Z. They are shunned and

¹ *See* 28 I&N Dec. 307 (A.G. 2021) (Attorney General Merrick Garland’s June 16, 2021 decision to vacate *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), reinstated pre-*A-B-* precedent, including *Matter of A-R-C-G-*.)

considered without value. Further, women who have undergone excision but have been unable to produce children are viewed as improperly excised or impure. See [REDACTED] Aff. ¶ 41, Ex. B.

The particular social group need not be visibly distinct to people of all cultures. Rather, the characteristics of the social group can be “only discernible by people familiar with the particular culture.” *Matter of M-E-V-G-*, 26 I. & N. Dec. at 236. The group has an “external perception component within a given society, which need not involve literal or ‘ocular’ visibility.” *Id.* While women without children may be accepted in other parts of the world, what matters for the purposes of asylum is how they are perceived in Burkina Faso. Unmarried women without children are shunned in Burkina Faso and considered worthless. [REDACTED] in-laws threatened and physically abused her due to her inability to have children. It would also be difficult to remarry if a woman has not had children before a certain age, which would raise questions about her fertility. [REDACTED] ex-husband has threatened to tell everyone she was infertile, so she would be shunned. See [REDACTED] Aff. ¶ 48, Ex. B. She would be unable to marry and would remain an excised woman who had no children, and this status would be clearly apparent to others in Burkinabe society.

c. [REDACTED] social group is particular.

To be particular, a social group must be “discrete and have definable boundaries.” *Matter of M-E-V-G-*, 26 I. & N. Dec. at 239. “[I]t must not be amorphous, overbroad, diffuse, or subjective,” and it must “provide an adequate benchmark for determining who falls within the group.” *Id.* The inquiry is fact-specific and focuses on how the society in which the group exists sees the group. See *Ordonez Azmen v. Barr*, 965 F.3d at 134. The agency must “determine on a case-by-case basis whether a group is a particular social group for the purposes of an asylum claim.” *Id.* at 135. This fact-specific inquiry lays out the bounds of the social group.

[REDACTED] social group meets these requirements. The group of Burkinabe women who were excised and cannot have children is discrete with definable boundaries. While most Burkinabe women are excised, they can usually have children and are therefore respected. The few excised Burkinabe women who cannot have children stand apart from the rest of society as outcasts. Since a woman’s value in Burkina Faso stems from her ability to produce and care for her family, a woman without children is considered to have no value. See *Married at 13*, Ex. AA. Further, girls are supposed to have as many children as their husbands want, regardless of what the girls themselves desire. See *id.* Excised women who cannot produce children are considered impure or improperly excised. They stand apart from other women in Burkina Faso due to their difference, and Burkinabe society shuns them as separate. It would be easy to mark [REDACTED] as a member of this particular social group and single her out for persecution on the basis of her membership. See Walker-Said Report, at ¶ 34, Ex. N.

2. [REDACTED] Has Suffered Past Persecution Due to Her Political Opinion.

In addition to being part of a particular social group, [REDACTED] has faced persecution on account of her political beliefs – her opposition to FGM. The meaning of “political opinion” is broad and does not require membership in a political party or the adoption of a particular political theory. See *Mandebvu v. Holder*, 755 F.3d 417, 429 (6th Cir. 2014). To obtain relief on the basis of a political opinion, an applicant does not have to be a member of a political party, as the “INA

protects individuals who do not belong to a political party to the same degree as those who do.” *Toure v. Att’y General of the U.S.*, 443 F.3d 310, 320 (3rd Cir. 2006). Rather, the applicant must show that persecution arises from her own political opinion and not just a generalized political motive. *See Hirpa v. Holder*, 327 F.App’x 265, 267 (2d Cir. 2009). Moreover, to claim persecution on account of an applicant’s political opinion, the applicant need not argue persecution solely on account of political opinion. *See Vumi v. Gonzalez*, 502 F.3d at 156. She may combine this claim with other grounds for asylum.

A claim of political persecution must consider the political context and country conditions. *See Vumi v. Gonzalez*, 502 F.3d at 156. In Burkina Faso, excision is exceedingly common. FGM remains widespread, with around 76 percent of girls and women aged 15 to 49 years having undergone FGM. *See* UNICEF, *Burkina Faso: Statistical Profile on Female Genital Mutilation/Cutting*, May 2020, at 4, Ex. U. Both men and women support female genital mutilation, and “anyone departing from the norm may face condemnation, harassment, and ostracism.” World Health Organization, *Eliminating female genital mutilation: An interagency statement of OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, WHO* (2008) at 5, Ex. O. Following her traumatic experience and ensuing complications, [REDACTED] is strongly and vocally opposed to FGM. If [REDACTED] were to return to Burkina Faso, she would be persecuted due to her opposition to FGM. Her former father-in-law and her ex-husband know of her opposition and would seek to punish her for her opposition and her efforts to escape to the United States.

3. [REDACTED] Likely Would Face Future Persecution on Account of Her Religion.

Additionally, [REDACTED] has a well-founded fear of future persecution on account of her religion. While she grew up Muslim, [REDACTED] converted to Christianity in 2017, while she was in the United States. *See* Pastor [REDACTED] Supporting Declaration ([REDACTED] Decl.), Ex. G; *see also* [REDACTED] Aff. ¶ 54, Ex. B. She was baptized in the United States in May 2021. *See* [REDACTED] Decl., Ex. G; *see also* Certificate of Baptism, Ex. I. To claim asylum on religious persecution grounds, the applicant must show past persecution or that they fear future persecution on the basis of religion. *See Rizal v. Gonzales*, 442 F.3d 84, 90 (2d Cir. 2006). Letters from a priest proving active membership in a Church as well as a baptismal certificate can qualify as evidence to corroborate an applicant’s identity as a Christian. *See Rizal*, 442 F.3d at 91. [REDACTED] letter from Pastor [REDACTED], her letter from her Church confirming her attendance at worship services, her certificate of baptism, and her affidavit all demonstrate her conversion to Christianity and dedication to the religion.

Further, evidence of country conditions demonstrating opposition to and violence against Christians can support a claim of future persecution. *See Rizal*, 442 F.3d at 91-93. There can be persecution when the government, “although not itself conducting the persecution, is unable or unwilling to control it.” *Rizal*, 442 F.3d at 92. Following the 2006 census, 61 percent of Burkina Faso is Muslim, 19 percent is Roman Catholic, 4 percent is Protestant, and 15 percent is solely indigenous beliefs. *See* U.S. Dep’t of State, *Burkina Faso 2020 International Religious Freedom Report* (2020) at 2, Ex. X. In 2020, Burkina Faso experienced several reported attacks on Christians. *Id.* at 5-6. In 2020, Christians continued to be forced from their homes due to violence at the hands of Islamic extremists. *See* Open Doors, *World Watch List 2021: Burkina Faso*, Ex.

BB. Conversion to Christianity from Islam “is extremely uncommon and largely considered an act of apostasy and cultural treason.” Walker-Said Report, at ¶ 10, Ex. N. Converting to a religion different from her family would be seen as rejecting her community and would make her vulnerable to attack by Islamic jihadist groups attacking her village, given the rise of religious militancy and religious violence. *See id.* With these incidents and Christianity as a minority religion in Burkina Faso, the opposition to and violence against Christians, as demonstrated by the country conditions, support ██████ fear of future persecution.

█████ experiences with her in-laws also demonstrate the danger of returning to Burkina Faso as a Christian. Her ex-father-in-law is a marabout, a Muslim religious leader, who would strongly oppose her conversion to Christianity. *See* ██████ Aff. ¶¶ 59, 63, Ex. B. Even though she has divorced her husband, ██████ would still experience future persecution from her in-laws since they would seek to harm her after she sought a better life in the United States and for converting to Christianity. Her ex-husband has already demanded to know her whereabouts from her family and would seek to punish her for her actions. *See* ██████ Aff. ¶ 52, Ex. B. Further, ██████ own family would reject her for converting to Christianity. When ██████ mother visited her in the United States in 2020, her mother told her the day she converted to Christianity would be the day she was no longer a member of the family. *See* ██████ Aff. ¶ 58, Ex. B. There are no Christians in ██████ hometown, and violence against Christians is widespread in Burkina Faso. *See* U.S. Dep’t of State, *Burkina Faso 2020 International Religious Freedom Report (2020)*, at 5-6, Ex. X. Further, “Christians who have converted from Islam also face significant pressure and opposition from their families and communities. Families may reject Christian converts, and new Christians may be pressured to renounce their new faith.” *See* Open Doors, Ex. BB.

█████ need not prove that the persecution she would face would be certain. “An alien’s fear [of future persecution] may be well-founded even if there is only a slight, though discernible, chance of persecution.” *Diallo v. INS*, 232 F.3d 279, 284 (2d Cir. 2000). Physical harm inflicted on account of an applicant’s religious beliefs can establish a well-founded fear of future persecution. *See Chen v. U.S. I.N.S.*, 359 F.3d 121, 128 (2d Cir. 2004) (finding that the persecution must be more than mere harassment but that non-life-threatening violence and physical abuse qualified). Since ██████ converted to Christianity after arriving in the United States, she cannot use past persecution to prove a well-founded fear of future persecution. However, her experience living with her religious in-laws has taught her the danger of returning to Burkina Faso as a Christian. She also does not know any Christians in Burkina Faso and has been explicitly told she would be rejected for her religion. With her personal experience of her husband’s family, her mother’s proclamation, and the country conditions revealing violence against and opposition to Christians, ██████ has a legitimate and well-founded fear of future persecution on account of her conversion to Christianity.

4. The Government of Burkina Faso is Unable or Unwilling to Protect

█████.

- a. In order to prove asylum, ██████ must show the government is unable or unwilling to protect her.

The Burkinabe government is unable and unwilling to protect ██████ from persecution. Courts in the Second Circuit recognize that mistreatment by private actors can rise to the level of persecution if the government is unable or unwilling to control the private actors. “[I]t is well established that private acts may be persecution if the government has proved unwilling [or unable] to control such actions.” *Pavlova v. INS*, 441 F.3d 82, 91 (2d Cir. 2006); *Aliyev v. Mukasey*, 549 F.3d 111, 116 (2d Cir. 2008). In determining whether the government is unwilling or unable to control a group, evidence includes country conditions, such as U.S. State Department reports, which must be considered in determining government willingness and ability to control private actors. *See Sangare v. Holder*, 330 F.App’x. 320, 322 n. 2 (2d Cir. 2009). All evidence that establishes “that authorities are unwilling and unable to protect against persecution” is relevant. *Martinez-Segova v. Sessions*, 696 F.App’x. 12, 13–14 (2d Cir. 2017) (holding that the BIA “failed to sufficiently consider the country conditions evidence in analyzing whether [Petitioner] demonstrated that the Salvadoran government was unable or unwilling to protect her from her husband”); *Aliyev*, 549 F.3d at 116.² Thus, the asylum office must consider the relevant country conditions in Burkina Faso.

Failing to report a crime is not necessarily fatal to the asylum claim. *See Martinez-Segova*, 696 F.App’x. at 13–14. An applicant does not have to demonstrate they made a report to the police to establish unwillingness to protect. *See Doe v. Att’y Gen. of the U.S.*, 956 F.3d 135, 146 (3rd Cir. 2020). Instead, the applicant can “fill the evidentiary gap” by “(1) demonstrating that a country’s laws or customs effectively deprive the petitioner of any meaningful recourse to governmental protection, 2) describing [p]rior interactions with the authorities, 3) showing that others have made reports of similar incidents to no avail, 4) establishing that private persecution of a particular sort is widespread and well-known but not controlled by the government, or 5) convincingly establish[ing] that [reporting] would have been futile or [would] have subjected [the applicant] to further abuse.” *See id.* (finding Ghanaian law deprives gay men of any meaningful recourse to protection and that reporting the incident would be futile) (citing *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1066–1067 (9th Cir. 2017)). If the police were unwilling to protect a similarly-situated refugee, this can help prove the government is unable or unwilling to protect the applicant. *See Pan v. Holder*, 777 F.3d 540, 545 (2d Cir. 2015). In particular, the Second Circuit has held that an applicant’s knowledge of local custom and knowledge of other women who have been excised can suffice to show the persecution would likely occur and that the government would not be able to stop it. *See Abankwah v. I.N.S.*, 185 F.3d 18, 25 (2d Cir. 1999). Thus, ██████ can prove that the authorities in Burkina Faso are unwilling and unable to protect her based on country conditions, common knowledge, and her previous experience.

b. Burkina Faso Continues to Mutilate Women.

FGM remains prevalent in Burkina Faso, despite its criminalization. The Second Circuit Court of Appeals has found that while the Burkinabe government clearly recognized and criminalized the practice of FGM, the number of prosecutions was insignificant. *See Abankwah*, 185 F.3d at 25. FGM remains widespread, with around 67.6% of women having undergone FGM as of 2015, despite its criminalization in 1996. *See Amnesty Int’l, Burkina Faso: Difficult Journey*

² The Second Circuit has declined to determine “precisely what a person must show in order for the government to be deemed responsible for the conduct of private actors,” but the applicant should “introduce[] enough evidence to forge the link between private conduct and public responsibility.” *Aliyev*, 549 F.3d at 118.

Towards Human Rights Respect, Amnesty Int'l Submission for the UN Universal Periodic Review, 30th Session of the UPR Working Group (May 2018), Ex. R. FGM, where practiced, is "deeply entrenched in social, economic and political structures." See World Health Organization, *Eliminating female genital mutilation* (2008), at 5, Ex. O. Where practiced, it is "supported by both men and women, usually without question, and anyone departing from the norm may face condemnation, harassment, and ostracism...In view of this conventional nature of female genital mutilation, it is difficult for families to abandon the practice." *Id.* Even though "FGM is banned, tradition and custom hold such sway that the practice continues to take place secretly in deplorable sanitary conditions, and there have been only occasion prosecutions." Amnesty Int'l, *Burkina Faso: Urgent need to protect girls from FGM and forced marriage* (Oct. 2018), at 2, Ex. Q. Twenty-five years after its criminalization, FGM remains prevalent and has simply moved underground. The practice of "FGM is so widespread and ingrained into traditional culture in Burkina Faso that...criminalization by the state has not resulted in the elimination of the practice, which is performed on 82 percent of women in Muslim Burkinabé communities." Walker-Said Report, ¶ 11(A), Ex. N. The Burkinabe government is both unwilling to intervene in FGM and unable to prevent its occurrence.

- c. Burkina Faso's government does not get involved in domestic affairs.

The Burkinabe government has been hesitant to intervene in domestic affairs and would not be able to protect ██████ from domestic violence or persecution on account of her political opinion or particular social group. ██████ marriage to ██████ was a solely religious marriage, and they had a religious divorce. The government of Burkina Faso would not intervene in a religious marriage. In Burkina Faso, many marriages are performed religiously, without the presence of a state official, which deprives the "union" of legal recognition and protection. See Amnesty Int'l, *Burkina Faso: Submission to the United Nations Human Rights Committee*, AFR 60/4066/2016 at 5 (2016), Ex. Y. This leads to a gap in the law and the protection of women. See *id.* In Burkina Faso, there are widespread social norms justifying spousal violence, and "34% of the population agree that a husband is justified in beating his wife under certain circumstances." *Burkina Faso Social Institutions and Gender Index (Burkina Faso-SIGI)*, OECD Social Institutions and Gender Index, at 5, Ex. V. The police in Burkina Faso are "reluctant to intervene in cases of local/domestic violence even when a member of the family is assaulted or threatened with kidnapping or death." Walker-Said Report, ¶ 31, Ex. N. As a result, Burkinabe authorities do not often intervene in domestic affairs, particularly when the marriage is a religious one. ██████ former in-laws already have threatened her upon her return to Burkina Faso and previously committed violence against her. The Burkinabe government would be unlikely to intervene to protect her.

Local authorities routinely disregard laws that protect women and girls in favor of upholding custom and tradition, which instead sanction and uphold violence against women and girls. Burkinabé society has been reluctant to report cases of abuse against women to the authorities, and there is little policing to protect women's rights. See Walker-Said Report, ¶ 11(D), Ex. P. Further, the "authorities may be unwilling or unable to interfere with traditional practices, because they are considered family or community matters, deeply entrenched and widely followed." Annemarie Middelburg & Alina Balta, *Female Genital Mutilation/Cutting as a*

Ground for Asylum in Europe, 28 Int'l J. of Refugee L. 3 at 446 (2016), Ex. W. Despite the existence of laws to protect women, the authorities are unlikely to enforce the laws in the context of domestic affairs. In particular, religious leaders such as █████ father-in-law “are part of indigenous governance structures in Burkina Faso that...have broad access across the country through ethnic networks and family lineages located in every town and village in Burkina Faso and can also use the police to their advantage.” Walker-Said Report, ¶ 11(C), Ex. N. “As a religious cleric and family elder, █████ father-in-law would also likely have the local authority to punish █████ with beatings, violence, or torture without the interference of local law enforcement, especially since her crime could be interpreted as a crime against Islam, which falls under the jurisdiction of the Islamic clerics.” *Id.* The police routinely fail to protect women from social or cultural abuse, as they are preoccupied with fighting organized crime, border crimes, and terrorism. *See id.*, at ¶ 27. This failure to protect women and girls leaves women like █████ vulnerable to the violence inflicted by their spouses and families. Thus, if █████ were forced to return to Burkina Faso, the Burkinabe government would be unwilling to protect █████ from the persecution she would face at the hands of her ex-husband and her in-laws.

5. █████ is Entitled to a Presumption of a Well-Founded Fear of Future Persecution.

Because █████ has established past persecution and has shown the government is unable or unwilling to protect her, she is entitled to a rebuttable presumption that she possesses a well-founded fear of future persecution. *See* 8 C.F.R. § 208.13(b)(1)(i). This presumption can only be rebutted if there is a fundamental change of circumstances or if █████ could avoid persecution by relocating within Burkina Faso, if reasonable. *See* 8 C.F.R. § 208.13(b)(1)(i)(A)-(B). An applicant who shows past persecution has a rebuttable presumption that she faces a threat of future persecution. *See Kone v. Holder*, 596 F.3d 141, 147 (2d Cir. 2010). The burden then falls on the government to rebut the presumption by showing that a fundamental change in circumstances has occurred such that the applicant’s life or freedom would not be threatened or a reasonable possibility of relocation in the country of removal. *Id.*

There has been no fundamental change in circumstances affecting █████ situation. The conditions in Burkina Faso have not improved significantly since █████ fled in May 2016. Requiring █████ to relocate would be ineffective and unreasonable, because her husband’s family would find her and continue to persecute her. Further, no matter where she lived in Burkina Faso, she would still be an unmarried Christian woman with no children, in a Muslim society that only values women for their childbearing and domestic capabilities. She would be shunned and have nowhere to live.

█████ experience of FGM creates a presumption of a well-founded fear of future persecution. A petitioner need not fear the repetition of the exact type of harm suffered in the past. *See Hassan v. Gonzalez*, 484 F.3d 513, 518 (8th Cir. 2007) (finding that petitioner does not need to establish a fear of suffering FGM a second time to show she would face persecution). The future persecution need not be the same as the past persecution. *See Kone v. Holder*, 596 F.3d at 149 (where the court found that domestic violence and rape could qualify as future persecution for victims of past female genital mutilation). █████ has a well-founded fear of future persecution in the form of domestic violence due to her status as a Burkinabe woman who has been excised and who cannot bear children, her past experience of FGM, and her past experience of

domestic violence. Even though she would likely not be living with her ex-husband if she were forced to return, he and his family have threatened to find her and hurt her. She need not prove that she would suffer the exact same harm, but she would suffer a similar harm to that suffered in the past.

██████ need not prove a high likelihood of persecution. An applicant’s “fear may be well-founded even if there is only a slight, though discernible, chance of persecution.” *Vumi v. Gonzalez*, 502 F.3d at 153. ██████ does not need to prove that it is highly likely that her former in-laws will seek to harm her, that she would be shunned and excluded on account of her religion, or that she would face persecution due to her status as an excised Burkinabe woman who cannot have children. She must show the slight, discernible chance of persecution, which her past persecution helps establish. As such, ██████ is entitled to the presumption of a well-founded fear of future persecution on account of her past persecution.

a. There has been no fundamental change of circumstances.

There has been no substantial change in the circumstances in Burkina Faso since ██████ departure five years ago. In this case, the government cannot show changed circumstances and cannot show how any generally changed conditions would alter or affect ██████ situation. To show changed conditions, the government “must ‘conduct an individualized analysis of how changed conditions would affect the specific petitioner’s situation’” and “cannot rely in a conclusory fashion on information in a State Department country report about ‘general changes in the country.’” *Passi v. Mukasey*, 535 F.3d 98, 101–102 (2d Cir. 2008) (quoting *Tambadou v. Gonzales*, 446 F.3d 298, 303 (2d Cir. 2006)). Despite the existence of some prosecutions of the perpetrators of FGM, Burkina Faso has not succeeded significantly in combating the practice and has not been able to protect its women.

While some country conditions evidence may show increased prosecution, the reality for an individual in ██████ position has not changed dramatically. While country condition reports can be useful and informative in demonstrating the conditions of a country, they are not binding. *See Chen v. U.S. I.N.S.*, 359 F.3d 121, 128 (2d Cir. 2004). When such a country condition report “suggests that, *in general*, an individual in the applicant’s circumstances would not suffer or reasonably fear persecution in a particular country, the immigration court may consider that evidence, but it is obligated to consider also any contrary or countervailing evidence with which it is presented, as well as the particular circumstances of the applicant’s case demonstrated by testimony and other evidence.” *Id.*

Burkina Faso outlawed FGM twenty-five years ago, but despite all the time that has passed, the national rate of FGM still remains as high as 65% to 76% nationally. *See* Amnesty Int’l, *Burkina Faso: Urgent need to protect girls from FGM and forced marriage* (Oct. 2018), at 2, Ex. Q. Between 2003-2010, the rate nationally increased from 72.5% to 75.8%. *See* 28 Too Many at 29, Ex. T. Further in Burkina Faso today, as noted above, it remains true that “[t]he physical integrity of women has limited protection,” and violence against women is “widely tolerated.” *See* 28 Too Many at 35, Ex. T. Women are often denied the right to own property and land, are refused social security and labor protections, and violence against women and girls persist at high rates and with relative impunity across the country. As mentioned above, the Burkinabe authorities would still be unlikely to intervene in a domestic violence situation. She would remain just as in

danger today as she was in 2016. As such, there has been no fundamental change in circumstances in the country such that [REDACTED] can feel assured of protection from persecution or otherwise eliminate her well-founded fear that she will experience serious harm and suffering if returned to Burkina Faso.

b. Relocating in Burkina Faso would be ineffective and unreasonable.

Relocation must be reasonable under the totality of circumstances. *See* 8 C.F.R. § 208.13(b)(1)(i)(B). There are two separate inquiries to determine whether an applicant could relocate within her home country: (1) whether safe relocation is possible, and if so, (2) whether it would be reasonable to expect the applicant to safely relocate. 8 C.F.R. §§ 1208.13(b)(2)(ii), 1208.13(b)(3)(I)). In the case of FGM, the impossibility of relocation can be shown by testimony and country conditions information, such as evidence that “1) FGM is widely practiced in [the country]; 2) acts of violence and abuse against women in [the country] are tolerated by the police; 3) the Government . . . has a poor human rights record; and 4) most African women can expect little governmental protection from FGM.” *Matter of Kasinga*, 21 I & N Dec. 357, 367 (B.I.A. 1996). Other relevant factors as to the reasonableness of relocation include “whether the applicant would face other serious harm” in relocating, “geographical limitations,” and “social and cultural constraints, such as age, gender, health, and social and familial ties.” 8 C.F.R. § 1208.16(b)(3). As mentioned above, 1) FGM is still widely practiced in Burkina Faso, 2) the police are unlikely to intervene in domestic affairs and violence against women, 3) the Burkina Faso government has a poor human rights record, and 4) Burkinabe women can expect little government protection from FGM despite its criminalization.

[REDACTED] also cannot relocate to escape domestic violence, and it would not be reasonable to expect her to relocate. [REDACTED] brother-in-law has threatened to kill her if she returned to the neighborhood. Both [REDACTED] mother and her former in-laws live in the same village, so she would not be safe if she went to live with either. Further, if she were to relocate to another village, her husband’s family would likely be able to find her. [REDACTED] father is a marabout, a Muslim religious leader, with connections and the ability to find people. She would not be safe from him and would continue to fear persecution. It would also be unreasonable to force her to leave all of her family and friends and live in a strange new city, where she does not know anyone. Here in the United States, [REDACTED] has her sister and her Church, but she would be forced to start over if she had to relocate in Burkina Faso. She would also have fewer opportunities as a woman in Burkina Faso and would struggle to protect herself.

Even if she were able to hide from her husband, no matter where she goes, [REDACTED] would still be an unmarried Christian woman and would be shunned in Burkina Faso. Since Burkina Faso has traditional gender norms, there would be questions as to why a woman of her age does not have children or a husband. Any future husband would ask questions and would learn that she could not bear children, decreasing her value in a traditional society. [REDACTED] would still face opposition to her Christianity and would be shunned by her family. She would be alone in the world, without the support system she has here in the United States, and persecuted due to her inability to bear children after being excised. Burkinabe society does not accept such women. Thus, relocation in Burkina Faso would be ineffective and unreasonable.

6. [REDACTED] Both Subjectively and Objectively Fears Future Persecution.

Even if [REDACTED] did not benefit from the presumption of past persecution, she would qualify for asylum because she has a well-founded fear of future persecution. An applicant can qualify for asylum if she can show “there is a reasonable possibility of suffering such persecution if he or she were to return” to her country of origin. *See* 8 C.F.R. §208.13(b)(2)(i). To establish a well-founded fear of future persecution, an applicant must demonstrate that her fear is subjectively genuine and objectively reasonable. *See Gomez v. I.N.S.*, 947 F.2d 660, 663 (2d Cir. 1991); *see also Huang v. U.S. I.N.S.*, 421 F.3d 125, 128 (2d Cir. 2005). The applicant must show, first, that she subjectively fears persecution and, second, that the fear is objectively reasonable. *See Jian Hui Shao v. B.I.A.*, 466 F.3d 497, 501 (2d Cir. 2006). This “fear may be well-founded even if there is only a slight, though discernible, chance of persecution.” *Vumi v. Gonzalez*, 502 F.3d at 153 (citing *Diallo v. I.N.S.*, 232 F.3d 279, 284 (2d Cir. 2000)). [REDACTED] can prove that her fear of future persecution is subjectively genuine and objectively reasonable.

a. [REDACTED] has a subjective fear of future persecution.

The question of subjective fear is a fact-intensive inquiry, specific to the applicant. *See Jian Hui Shao v. B.I.A.*, 465 F.3d at 501. An applicant must provide credible testimony that she “subjectively fears persecution.” *Jin Chen v. Holder*, 526 F.App’x. 85, 87 (2d Cir. 2013). Subjective persecution can be proved through the applicant’s credible testimony that her fear is genuine. *See Ramsameachire v. Ashcroft*, 357 F.3d at 178. [REDACTED] is terrified of being forced to return to Burkina Faso. *See* Applicant’s Asylum Appl. Form I-589, Ex. A. She suffered abuse at the hands of her ex-husband and his family and faced threats they have made upon her life and her safety. [REDACTED] knows and subjectively fears that her ex-husband’s family will find her and hurt her if she returns to Burkina Faso. Her experience growing up as a Muslim in a Muslim-dominated village and hearing her mother say she would be rejected for being a Christian has instilled in her a reasonable fear of persecution on the basis of religion. Lastly, her experience with her ex-husband’s family and their knowledge of her opposition to FGM have led her to reasonably fear persecution on the basis of her political opinion. [REDACTED] cries nearly every time she discusses the possibility of having to return. As a result, she has a subjective fear of future persecution based on her past experience of persecution and on her personal knowledge of what circumstances await her return.

b. [REDACTED] fear of future persecution is objectively reasonable.

[REDACTED] fear of returning is objectively reasonable because “a reasonable person in her circumstances would fear persecution.” *Huang v. U.S. I.N.S.*, 421 F.3d at 128. To show objective reasonableness, the applicant must provide documentary evidence or testimony from which it can be inferred that she would face persecution on the basis of one of the five categories: race, religion, nationality, political opinion, or membership in a particular social group. *See Gomez v. I.N.S.*, 947 F.2d at 663. Objective reasonableness relies on context and believability through reliable, objective supporting evidence. *See Ramsameachire v. Ashcroft*, 357 F.3d at 178. Asylum applicants can demonstrate the objective component by showing persecution in the past or by showing they have a good reason to fear future persecution. *See Canalaes-Vargas v. Gonzales*, 441 F.3d 739, 743 (9th Cir. 2006).

Further, an applicant need not demonstrate a reasonable possibility that he will be singled out for persecution “if he can demonstrate that there is a pattern or practice ... of persecution of a group of persons similarly situated to the applicant, and the applicant is a member of the group, such that his or her fear of persecution upon return is reasonable.” *Ramsameachire v. Ashcroft*, 357 F.3d at 183 (internal citations and quotations omitted). Therefore, ██████████ can demonstrate the objective reasonableness of her fear with country conditions evidence.

██████████ fears are objectively reasonable because they are substantiated by the country conditions in Burkina Faso. In total, these circumstances establish at the very least a ten percent chance that she will be persecuted if returned to Burkina Faso, which is what the law requires. See *Canalaes-Vargas v. Gonzales*, 441 F.3d at 743; see also *Vumi v. Gonzalez*, 502 F.3d at 153. A well-founded fear does not require certainty or even a probability of persecution. See *Canalaes-Vargas v. Gonzales*, 441 F.3d at 743. Threats of death by an organization or individuals capable of carrying them out are sufficient for evidence of an objectively reasonable fear of future persecution. See *id.* at 743-44.

Based on her past experience and testimony, ██████████ has an objectively reasonable fear of future persecution on the basis of her membership in a particular social group of excised Burkinabe women who cannot bear children, her religion, and her political opinion. Her ex-husband’s family has threatened to kill her if she returned, and she knows that her powerful father-in-law is capable of poisoning or beating those who oppose him. See ██████████ Aff. ¶¶ 71, 73, Ex. B. If she were to return, she would have nowhere to hide, since her mother lives in the same neighborhood as her ex-husband’s family and because her ex-husband’s family has connections and would be able to find her. As mentioned above, the government would be unlikely to intervene in what they would view as an internal family affair. Norms in Burkina Faso justify spousal violence against women, as a third of Burkinabe society agree that a husband is justified in beating his wife under certain circumstances. See *Burkina Faso Social Institutions and Gender Index (Burkina Faso-SIGI)*, OECD Social Institutions and Gender Index, at 5, Ex. V. ██████████ mother has told her she would no longer be a part of her family if she returned as a Christian. See ██████████ Aff. ¶ 58, Ex. B. The majority of Burkina Faso is Muslim, and Burkina Faso experienced several religiously motivated attacks on Christians in 2020. See U.S. Dep’t of State, *Burkina Faso 2020 International Religious Freedom Report (2020)*, at 2, 5-6, Ex. X. Christians continued to face violence at the hands of Islamic extremists in 2020 and were forced into refugee camps. See *Open Doors*, Ex. BB. “The police in Burkina Faso do not enforce the law criminalizing FGM, nor do they protect women from other forms of gender-based violence such as domestic violence or family-based violence.” Walker-Said Report, ¶ 18, Ex. N. Women “do not have a legal basis on which to challenge myriad forms of violence against them...even lethal violence meted out against them by their spouses or their spouse’s families.” *Id.*, at ¶23. Thus, ██████████ fear of persecution is supported by the evidence.

The country conditions evidence and ██████████ own experience with her family and with her in-laws reveal an objectively reasonable fear of future persecution. A reasonable person who was excised and unable to bear children, who returns as a Christian to a majority-Muslim village, and who opposes FGM in a conservative community, would reasonably fear persecution on the basis of her membership in a particular social group, her religion, and her political opinion. Thus,

██████ has satisfied the requirements of a well-founded fear of future persecution, establishing the basis for an asylum claim.

7. The One-Year Bar to Asylum Should be Excused.

Although ██████ has filed her asylum claim a few days outside of the one-year bar, she falls under the extraordinary circumstances exception due to her severe illness in the months preceding the deadline. The law requires applicants to file for asylum within one year after the date of the applicant's arrival in the United States. *See* 8 U.S.C.A. §1158(a)(2)(B). However, this one-year bar may be disregarded in the case of changed circumstances that materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing. *See* 8 U.S.C.A. §1158(a)(2)(D); *see also* *Ordonez Azmen v. Barr*, 965 F.3d at 137. ██████ delay in filing was a result of her severe illness that directly preceded the deadline. She was unable to file for asylum due to her severe illness and urgent need for medical attention.

Since her excision, ██████ had experienced painful intense stomach pains, fibroids in her uterus, painful and extended menstrual cycles, and resulting anemia. In the months leading up to the one-year anniversary of her time in the United States, ██████ became very ill but was nervous about seeking medical treatment in the United States due to immigration concerns. In or about May 2017, she fainted in her sister's home and had to go to the hospital. *See* ██████ Aff. ¶ 65, Ex. B. The hospital found she was severely anemic and needed a blood transfusion. *See* ██████ Dec. ¶ 10, Ex. M; *see also* Medical Records, at pp. 4, 10, Ex. K. She had been very ill for some time, and her illness had become debilitating, leading to the delay in her application.

In fact, ██████ submitted her application *before* the one-year deadline, as evidenced by her signature on the original I-589, which is dated May 10, 2017, two days before the one-year deadline. *See* Original I-589, Ex. L. The USCIS receipt notice, while dated May 19, 2017, notes that they received her application on May 15, 2017. *See* Receipt Notice, Ex. L. May 15 is three days after May 12, 2017, which marks one year after ██████ arrival in the United States. Thus, she applied on time, and USCIS only received her application three days late.

██████ meets all three requirements for extraordinary circumstances. To plead extraordinary circumstances, the applicant must show "(1) the circumstances were not intentionally created by the applicant; (2) the circumstances were directly related to the applicant's failure to file the application within the 1-year period; and (3) the delay was reasonable under the circumstances." *Abankwah v. Lynch*, 632 F.App'x 670, 672 (2d Cir. 2015) (holding that while serious illness may constitute extraordinary circumstances, it will not justify a seven-year delay in filing). First, ██████ did not create her illness; it resulted from her uterine fibroids. Second, her illness was directly related to her delay in filing, as she was preoccupied with her illness and therefore unable to submit the paperwork in time. Third, the delay was reasonable under the circumstances, as she only missed the deadline by three days, unlike the seven-year delay in *Abankwah v. Lynch*.

The definition of a reasonable period has not been definitively determined, but here ██████ *de minimis* delay of three days should certainly constitute a reasonable delay. The regulations require that an applicant who seeks to prove extraordinary circumstances show they filed the application within a reasonable period given the circumstances. *See* 8 C.F.R.

§1208.4(a)(5); *see also* *Bouchikhi v. Holder*, 676 F.3d 173, 178 (5th Cir. 2012); *see also* *Umirov v. Whitaker*, 760 F.App'x 17, 19 (2d Cir. 2019). While there is no bright-line rule on what reasonable means, *see* *Apriyandi v. Holder*, 573 F.App'x 43, 45 (2d Cir. 2014), asylum seekers should apply for asylum status as soon as possible after their status expires. *See* *Matter of T-M-H- & S-W-C-*, 25 I. & N. Dec. 193 (B.I.A., 2010) (where the court found that six months or longer would not be considered reasonable). The government should consider “shorter periods of time...on a case-by-case basis, with the decision-maker taking into account the totality of the circumstances.” *Matter of T-M-H- & S-W-C-*, 25 I. & N. Dec. 193 (B.I.A., 2010). [REDACTED] three-day delay is significantly shorter than six months and should be considered reasonable given her illness directly preceding her filing.

The law did not intend to bar asylum applications filed a couple of days late. Senator Hatch, former Chairman of the Judiciary Committee, commented on the changed and extraordinary circumstances exception, stating it was “intended to ‘ensur[e] that those with legitimate claims of asylum are not returned to persecution, particularly for technical difficulties.’” 142 Cong. Rec. S11, 840 (daily ed. Sept. 30, 1996) (statement of Sen. Hatch).” *Ordenez Azmen v. Barr*, 965 F.3d at 138. Thus, [REDACTED] three-day delay should not invalidate her claim for asylum and force her to return to the abuse and potentially deadly conditions that await her in Burkina Faso. The asylum office should grant her the extraordinary circumstances exception to the one-year bar. Further, [REDACTED] only missed the deadline by a few days. She signed and posted her original I-589 on May 10, 2017, which was two days before the one-year mark of her arrival in the United States. *See* Original I-589, Ex. L. In its receipt notice dated May 19, 2017, USCIS noted they had received her I-589 on May 15, 2017, only three days past the one-year mark. *See* Receipt Notice, Ex. L. For such a small amount of time, [REDACTED] asks the Asylum Office to consider the extraordinary circumstances of her illness as excusing the delay of a few days.

8. No Other Bars to Asylum Apply.

No other bars to asylum apply. Affirmative bars include whether the applicant 1) participated in persecution, 2) was convicted of a serious crime in the United States, 3) committed a serious nonpolitical crime outside of the United States, 4) poses a danger to the United States, and 5) attained firm resettlement in a third country before arriving to the United States. *See* INA §208(b)(2)(A)-(B). [REDACTED] has never participated in persecution, been convicted of a serious crime in the United States, committed a serious nonpolitical crime outside of the United States, or presented a danger to the United States.

She also has not attained firm resettlement in another country. For the purposes of asylum, an individual is “considered firmly resettled only if, prior to arrival in the United States, he or she entered into another nation with, or while in that nation received, an offer of permanent residence status, citizenship, or some other type of permanent resettlement.” 8 C.F.R. §208.15. On her journey to the United States, [REDACTED] had a brief layover in France, but she never left the airport. She did not have status in France and knew she was not entitled to status there. She did not establish any lawful status in France, has no family there, and continued on to the United States. Therefore, [REDACTED] did not obtain firm resettlement in a third country before reaching the United States.

B. ██████ Is Entitled to a Humanitarian Exception on the Basis of Her Past Persecution in the Form of Female Genital Mutilation.

1. ██████ Has Suffered Past Persecution of Female Genital Mutilation.

█████ past experience of FGM can serve as the basis of a claim of asylum. The practice of FGM can serve as the basis of a claim of past persecution if the applicant establishes “(1) the FGM constituted persecution; (2) the alien belonged to a particular social group; and (3) there was a nexus between the FGM and membership in the group – that is, the FGM was performed on account of her membership in that group.” *Niang v. Gonzalez*, 422 F.3d 1187, 1197 (10th Cir. 2005).

First, several circuits have held that FGM constitutes persecution, either for past persecution or to determine a well-founded fear of persecution. *Niang v. Gonzalez*, 422 F.3d at 1197 (citing to *Mohammed v. Gonzalez*, 400 F.3d 785, 795 (9th Cir. 2005), *Abay v. Ashcroft*, 368 F.3d 634, 638 (6th Cir. 2004), and *Nwaokolo v. INS*, 314 F.3d 303, 308 (7th Cir. 2002)). The Circuits have recognized that “the mutilation of women and girls is a horrifically brutal procedure, often performed without anesthesia that causes both short-and long-term physical and psychological consequences.” *Benyamin v. Holder*, 579 F.3d 970, 976 (9th Cir. 2009) (citing to *Nwaokolo v. INS*, 314 F.3d 303, 308 (7th Cir. 2002)). ██████ was a victim of FGM at the age of ten in 1990. Thus, her experience of FGM constitutes persecution.

Second, women of specific tribal groups who are typically excised can constitute a particular social group. The BIA does not require more than gender plus a tribal membership to identify a social group. *See Niang v. Gonzalez*, 422 F.3d at 1200. Nearly all Wala women in Burkina Faso are excised. Simply living as a woman in a country that excises women could lead to a “well-founded fear of persecution based solely on gender given the prevalence of FGM.” *Hassan v. Gonzalez*, 484 F.3d at 518. As a member of the Wala group, ██████ was excised at the age of ten. Therefore, she is a member of the particular social group of Wala women.

Third, there must be a connection between the persecution and the membership in the particular social group. *See Niang v. Gonzalez*, 422 F.3d at 1200. An applicant may establish past persecution on account of being a member of a social group of women in a culture that mutilates genitalia. *See Mohammed v. Gonzalez*, 400 F.3d at 797. ██████ experienced FGM because of her membership in the particular social group of Wala women. As Burkinabe society excises nearly all Wala women, ██████ excision resulted from her membership in the group. *See Walker-Said Report*, at ¶ 11(A), Ex. N. Thus, ██████ suffered past persecution of female genital mutilation on the basis of her membership in the group of Wala women.

2. ██████ is Entitled to the Humanitarian Exception.

In cases of severe past persecution, the BIA can grant humanitarian asylum. The humanitarian exception allows a victim of past persecution to be granted asylum even without a fear of future persecution if the applicant can show “(1) compelling reasons for being unwilling or unable to return because of the severity of the past persecution, 8 C.F.R. §1208.13(b)(1)(iii)(A), or (2) a reasonable possibility that she may suffer other serious harm upon returning to that country, 8 C.F.R. §1208.13(b)(1)(iii)(B).” *Mohammed v. Gonzalez*, 400 F.3d at 801. FGM can constitute

a particularly severe form of past persecution that qualifies for humanitarian asylum. *See Benyamin v. Holder*, 579 F.3d at 977; *see also Mohammed v. Gonzalez*, 400 F.3d at 801. As a result, based on her past persecution, [REDACTED] is entitled to asylum. She has demonstrated both compelling reasons for being unable and unwilling to return, based on her traumatic experiences and fears of future harm, and a reasonable possibility of other serious harm if she returns.

In addition, [REDACTED] is entitled to asylum due to her past persecution and fear of future harm. Humanitarian asylum can be appropriate in some cases of female genital mutilation if the applicant establishes she will face future harm that is not related to a protected ground. *See Kone v. Holder*, 596 F.3d at 152. The applicant must show the existence of a reasonable possibility that she will suffer other serious harm upon removal. *See id.* The serious harm need not be inflicted on account of race, religion, nationality, membership in a particular social group, or political opinion but must be severe enough to qualify as persecution. *See id.* Even if the asylum office finds that [REDACTED] fear of harm by her in-laws is not on the basis of a protected ground, she has proven a reasonable possibility of other serious harm upon removal that qualifies as persecution. Thus, she deserves the humanitarian exception.

C. [REDACTED] Qualifies for Withholding of Removal Under INA § 241(b)(3).

In the alternative, [REDACTED] qualifies for withholding of removal. The Immigration and Nationality Act “requires the Attorney General to withhold deportation of an alien who demonstrates that his ‘life or freedom would be threatened’ on account of one of the listed factors if he is deported.” *I.N.S. v. Cardoza-Fonseca*, 480 U.S. at 423. The applicant must show that it is “more likely than not” that she will be persecuted on account of a protected ground upon removal. *See id.*; *see also I.N.S. v. Stevic*, 467 U.S. 407, 429-430 (1984); *see also Vanegas-Ramirez v. Holder*, 768 F.3d 226, 237 (2d Cir. 2014). To obtain withholding of removal, the applicant must show a “clear probability of persecution upon removal” and that one central reason for persecution is one of the five protected grounds. *See Rubio v. Wilkinson*, 846 F.App’x. 41, 42 (2d Cir. 2021). Refugees “who can show a clear probability of persecution are entitled to mandatory suspension of deportation and eligible for discretionary asylum, while those who can only show a well-founded fear of persecution are not entitled to anything, but are eligible for the discretionary relief of asylum.” *I.N.S. v. Cardoza-Fonseca*, 480 U.S. at 444; *see also I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 419 (1999).

[REDACTED] is eligible for withholding of removal because it is more likely than not that her life and safety will be threatened on account of her membership in a particular social group, her religion, and her political opinion. As explained above, [REDACTED] suffered a past threat to her safety, as her in-laws physically and verbally abused her due to her membership in the particular social group of excised Burkinabe women who cannot have children. Her ex-husband also threatened to have her excised a second time and has sought to learn her whereabouts after her escape to the United States. This creates a rebuttable presumption that it is more likely than not that there will be a future threat to [REDACTED] safety. *See* 8 C.F.R. §1208.16(b)(1)(i). There has been no fundamental change of circumstances in Burkina Faso such that the government can rebut the presumption of a future threat to life or freedom. *See* Section I.A.5.a above; *see also* 8 CFR §1208.16(b)(1)(i)(A). Internal relocation within Burkina Faso is unavailable because her ex-husband and in-laws could find her, and she would still be an unmarried Christian woman who cannot bear children. *See* Section I.A.5.b above; *see also* 8 C.F.R. §1208.16(b)(1)(i)(B). Thus, it

is more likely than not that [REDACTED] would be persecuted upon her return to Burkina Faso. She is therefore entitled to a mandatory suspension of deportation. Based on the clear probability of persecution upon removal, [REDACTED] qualifies for withholding of removal.

D. [REDACTED] Also Qualifies for Protection Under the Convention Against Torture

[REDACTED] also qualifies for relief under the Convention Against Torture (“CAT”). CAT relief does not require a nexus to a protected ground. *See Aliyev v. Mukasey*, 549 F.3d at 116 n.5. Rather, she need only prove that “it is more likely than not that [she] ... would be tortured if removed to [Burkina Faso].” 8 C.F.R. §1208.16(c)(2). The law defines torture as:

“[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as ... intimidating or coercing him ... when such pain or suffering is inflicted by or at the instigation or with the consent or acquiescence of a public official or other person acting in an official capacity.”

8 C.F.R. §1208.18(a)(1). Torture includes “prolonged mental harm caused by or resulting from ... [t]he intentional infliction or threatened infliction of severe physical pain or suffering” or “[t]he threat of imminent death.” *Id.*, §1208.18(a)(4)(i), (iii).

[REDACTED] need only show that the government acquiesced to torture by knowing of or remaining willfully blind to the activity constituting torture and failing to prevent it. *See id.*, §1208.18(a)(7); *Delgado v. Mukasey*, 508 F.3d 702, 708 (2d Cir. 2007). Government acquiescence does not require consent or approval, just that “government officials know of or remain willfully blind to an act and thereafter breach their legal responsibility to prevent it.” *Delgado v. Mukasey*, 508 F.3d at 708. The asylum office must consider the cumulative effect of the applicant’s experience in determining whether she is entitled to relief. *See Poradisova v. Gonzales*, 420 F.3d 70, 79 (2d Cir. 2005).

As explained above, [REDACTED] has suffered severe pain, both mental and physical, through her FGM and the physical and verbal abuse from her in-laws due to her inability to have children. Experiencing FGM at a young age was a traumatic experience that still remains with her, both physically and emotionally. [REDACTED] in-laws have inflicted such severe pain and suffering that they pushed her to attempt suicide and forced her from their home. As outlined above, the Burkinabe government will not intervene in what they see as domestic affairs, and they have been ineffective in stopping FGM. Taken together, these incidents rise to the level of harm contemplated by the statute. Thus, [REDACTED] merits protection under CAT.

III. CONCLUSION

In sum, [REDACTED] should be granted asylum. In the alternative, [REDACTED] should be granted withholding of removal under the Act and the Convention Against Torture. [REDACTED] respectfully requests that the Asylum Office grant this application in its entirety.

Respectfully submitted,



Jamie Brensilber
DLA Piper LLP (US)
1251 Avenue of the Americas, 27th Floor
New York, NY 10020
Tel: 212-335-4553
Fax: 917-778-8845
jamie.brensilber@us.dlapiper.com

Attorney for Petitioner

Applicant Details

First Name	Molly		
Last Name	Harwood		
Citizenship Status	U. S. Citizen		
Email Address	molly.harwood@gmail.com		
Address	<table> <tr> <th>Address</th> </tr> <tr> <td> Street 137 Atlantic Ave City Brooklyn State/Territory New York Zip 11201 Country United States </td> </tr> </table>	Address	Street 137 Atlantic Ave City Brooklyn State/Territory New York Zip 11201 Country United States
Address			
Street 137 Atlantic Ave City Brooklyn State/Territory New York Zip 11201 Country United States			
Contact Phone Number	8473473184		

Applicant Education

BA/BS From	University of Michigan-Ann Arbor
Date of BA/BS	May 2013
JD/LLB From	Vanderbilt University Law School
	http://law.vanderbilt.edu/employers-cs/judicial-clerkships/index.aspx
Date of JD/LLB	May 14, 2021
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Environmental Law and Policy Annual Review
Moot Court Experience	Yes
Moot Court Name(s)	

Bar Admission

Admission(s)	New York
--------------	-----------------

Prior Judicial Experience

Judicial Internships/
Externships **No**
Post-graduate Judicial
Law Clerk **No**

Specialized Work Experience

Recommenders

Green, Barbara
braney@nclas.org
Rose, Barbara
barbara.rose@vanderbilt.edu
6153435805
Kay, Susan
susan.kay@vanderbilt.edu
615-322-4151

References

Stephanie Solomon, Senior Attorney, Nassau Legal Aid
804-283-4639
ssolomon@nclas.org

Michael Williams, Senior Civil Attorney, The Door
347-464-8265
michael@door.org

Georgia Sims, Assistant Deputy Public Defender, Nashville Public
Defender Office
615-479-0971
georgiasims@jnsnashville.gov

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

The Honorable Judith C. McCarthy
Federal Building and United States Courthouse
300 Quarropas St.
White Plains, NY 10601

April 29, 2023

Dear Judge McCarthy,

I am seeking a position as a clerk in your chambers for the 2024-2025 term. I graduated from Vanderbilt University Law School in 2021. I am currently a staff attorney with the Nassau County Legal Aid Society. Your career path highlights your dedication to public service work as well as extensive litigation experience. I would greatly appreciate the opportunity to learn from you. I am specifically seeking a position as a magistrate clerk, as I believe it will provide me with the best insight into the life of a case and help me understand complex litigation.

I am interested in a clerkship position for a number of reasons. First, I am passionate about public service. In college, I facilitated theater workshops in prisons. Following my undergraduate graduation, I was a case manager in the foster care system in the Bronx and in homeless services in the Lower East Side. I am currently a public defender, a position I find challenging and exciting.

I have extensively sought opportunities that help me grow into a better lawyer. During law school, I sought internships focused on legal writing opportunities in both civil and criminal law to hone my legal writing skills. I strengthened my legal research skills as a teaching assistant for the legal writing department during my second year of law school and as a research assistance for a housing clinic professor in my third year. Additionally, in my third year of law school, I was the Executive Editor of the Environmental Law and Policy Annual Review.

In the many positions I've held, I have watched how the courts have affected the lives of my clients. Prior to law school, I had a very limited understanding of why my clients received the results they did. Becoming a lawyer has allowed me to better understand the intricacies of the legal system. The opportunity to be a clerk in your chambers would allow me to deepen my understanding of the law. I would like to use the skills gained in your chambers to better advocate for my clients and deepen my legal research, writing, and reasoning skills.

Included in my application are my resume, my law school transcript, my undergraduate transcript, and a writing sample. Letters of recommendation from the following professors and employers will arrive separately:

Barbara Rose
Legal Writing Professor
Vanderbilt Law School

Susan Kay
Associate Dean
For Experiential Education
Vanderbilt Law School

Barbara Raney
District Court Bureau Chief
Nassau County Legal Aid

Please let me know if I can provide any additional information. I look forward to speaking with you. Thank you for your time and consideration.

Molly Harwood

Molly Harwood

(847) 347-3184 // molly.harwood@gmail.com // Brooklyn, NY

ADMISSIONS: New York State Bar, Second Department, 2022

WORK EXPERIENCE

Nassau County Legal Aid Society // Hempstead, NY // Fall 2021 to Present

Staff Attorney

- Conducted arraignments for indigent and non-indigent individuals charged with felony and misdemeanor offenses
- Filed over forty motions, including a successful writ of habeas corpus and a motion to show cause
- Managed a high-volume caseload and appeared in daily court proceedings

Nashville Defenders // Nashville, TN // Winter 2020 to Summer 2020

Legal Intern

- Conducted legal research and writing, analyzed discovery and initiated investigation on cases
- Completed Gideon's Promise Summer Training Institute

The Door // New York, NY // Summer 2020

Legal Intern

- Provided legal direct services to young people across all five boroughs of New York City virtually

Neighborhood Defender Service of Harlem // New York, NY // Summer 2019

Legal Intern

- Conducted extensive legal research and writing, including multiple successful motions
- Facilitated weekly walk-in intake program provided to the local Harlem community

Center for Urban Community Services // New York, NY // Fall 2016 to Summer 2018

Case Manager III- Supportive Housing

- Provided therapeutic counseling, crisis intervention & psychoeducation for a high-volume caseload

Graham Windham Foster Care Agency // Bronx, NY // Summer 2013 to Fall 2016

Case Planner - Treatment Family Foster Care

- Coordinated/monitored services for children, foster parents, and biological families in the child welfare system

Prison Creative Arts Project // Ann Arbor, MI // Winter 2011 to Spring 2013

Workshop Facilitator

- Editor of the Michigan Review of Prisoner Creative Writing - Vol. 5
- Facilitated theater workshops in two men's prisons in Michigan

EDUCATION

Vanderbilt University Law School // Nashville, TN // Class of 2021

Juris Doctor

VLS Honors: National Association of Women Lawyers Outstanding Law Student Award; Justice-Moore Scholar; Cal Turner Moral Leadership Fellow; Lightfoot, Franklin & White Legal Writing Best Oralist

Activities: Criminal Law Clinic; ENVIRONMENTAL LAW AND POLICY REVIEW, *Executive Editor*; Legal Aid Society, *Director of Medical Legal Partnership* (2019-2020); Teaching Assistant, *Legal Writing Program* (2019-2020)

University of Michigan // Ann Arbor, Michigan // Class of 2013 //

Bachelor of Arts, Concentration in Spanish (Honors); Social Theory and Practice (Highest Honors); Minor in Philosophy
Thesis: *The Fiscal Cliff of Capital Punishment: The Impact of Economics on the Public Perception of the Death Penalty*



OFFICE OF THE University Registrar

110 21st Avenue South
PMB 407701
Nashville, TN 37240-7701
Phone: (615) 322-7701
Fax: (615) 343-7709
Email: university.registrar@vanderbilt.edu
Web: registrar.vanderbilt.edu

To: Molly Harwood

Re: Transcript of: Harwood, Molly Katherine

Request Number: 37146847

Vanderbilt University Official Transcript Statement of Authenticity

This official transcript has been transmitted electronically to the recipient, and is intended solely for use by that recipient. If you are not the intended recipient, please notify the Office of the University Registrar at Vanderbilt University. It is not permissible to replicate this document or forward it to any person or organization other than the identified recipient. Release of this record or disclosure of its contents to any third party without written consent of the record owner is prohibited.

This official transcript has been digitally signed and therefore contains special security characteristics. If this transcript has been issued by Vanderbilt University and for optimal results, we recommend that this document is viewed with the latest version of Adobe® Acrobat or [Adobe® Reader](#); it will reveal a digital certificate that has been applied to the transcript. This digital certificate will appear in a pop-up screen or status bar on the transcript, display a blue ribbon, and declare that the document was certified by Vanderbilt University with a valid certificate issued by GeoTrust CA for Adobe®. This transcript certification can be validated by clicking on the Signature Properties of the transcript.



The blue ribbon symbol is your assurance that the digital certificate is valid, the transcript is authentic, and the contents of the transcript have not been altered.



If the transcript does not display a valid certification and signature message, reject this transcript immediately. An invalid digital certificate display means either the digital certificate is not authentic, or the transcript has been altered. The digital certificate can also be revoked by the Office of the University Registrar if there is cause, and digital certificates can expire. A transcript with an invalid digital certificate display should be rejected.



Lastly, one other possible message, Author Unknown, can have two possible meanings. The certificate is a self-signed certificate or has been issued by an unknown or untrusted certificate authority, or the revocation check could not be completed. If you receive this message make sure you are properly connected to the internet. If you have an internet connection and still cannot validate the digital certificate, reject this transcript.

The transcript key and guide to transcript evaluation is the last page of this document.

The current version of Adobe® Reader is free of charge, and available for immediate download at <http://www.adobe.com>.

If you require further information regarding the authenticity of this transcript, email or call the Office of the University Registrar at Vanderbilt University at transcripts@vanderbilt.edu or (615) 322-1800.

OFFICE OF THE UNIVERSITY REGISTRAR
NASHVILLE, TENNESSEE 37240

Page 1 of 2

Name : Molly Katherine Harwood
Student # : 000565843
Birth Date : 06/03

Information contained in this document is confidential and should not be released to a third party without the written permission of the student.
 This transcript is printed on gold SCRIP-SAFE® security paper.
 A black and white document is not official.

Degree(s) Awarded

Degree: Doctor of Jurisprudence
 Confer Date: 2021-05-14
 Major: Law

Academic Program(s)

Award: Women Lawyers' Outstanding Stu

Law J.D.
 Law Major

Law Academic Record (4.0 Grade System)

2018 Fall				
LAW 6010	Civil Procedure	4.00	B+	13.20
Instructor:	Suzanna Sherry			
LAW 6020	Contracts	4.00	B+	13.20
Instructor:	Rebecca Allensworth			
LAW 6040	Legal Writing I	2.00	B+	6.60
Instructor:	Barbara Rose			
LAW 6060	Life of the Law	1.00	P	0.00
Instructor:	Amanda Rose			
LAW 6090	Torts	4.00	B	12.00
Instructor:	Sean Seymore			

	EHRS	QHRS	QPTS	GPA
SEMESTER:	15.00	14.00	45.00	3.214
CUMULATIVE:	15.00	14.00	45.00	3.214

2019 Spring				
LAW 6030	Criminal Law	3.00	A-	11.10
Instructor:	Christopher Slobogin			
LAW 6050	Legal Writing II	2.00	B+	6.60
Instructor:	Barbara Rose			
LAW 6070	Property	4.00	A-	14.80
Instructor:	Michael Vandenberg			
LAW 6080	Regulatory State	4.00	B+	13.20
Instructor:	Kevin Stack			
LAW 7400	Juvenile Justice	3.00	A-	11.10
Instructor:	Terry Maroney			

	EHRS	QHRS	QPTS	GPA
SEMESTER:	16.00	16.00	56.80	3.550
CUMULATIVE:	31.00	30.00	101.80	3.393

2019 Fall				
LAW 5900	Moot Court Competition	1.00	P	0.00
Instructor:	Susan Kay			
LAW 7078	Constitutional Law I	3.00	A-	11.10
Instructor:	Jessica Clarke			
LAW 7116	Corporations & Bus. Ent.	4.00	A	16.00
Instructor:	Randall Thomas			
LAW 7395	Environmental Annual Rev	1.00	P	0.00
Instructor:	Michael Vandenberg			
LAW 7464	Legl Writing Asst.. for Credit	1.00	P	0.00
Instructor:	Jennifer Swezey			
LAW 8000	Actual Innocence	3.00	B+	9.90
Instructor:	Terry Maroney			
LAW 8130	Mntl Hlth Law: Dep Life&Lbrty	2.00	B+	6.60
Instructor:	Christopher Slobogin			

	EHRS	QHRS	QPTS	GPA
SEMESTER:	15.00	12.00	43.60	3.633
CUMULATIVE:	46.00	42.00	145.40	3.461

2020 Spring				
LAW 7124	Criminal Pro:Adjudicatio	3.00	P	0.00
Instructor:	Nancy King			
LAW 7395	Environmental Annual Rev	1.00	P	0.00
Instructor:	Michael Vandenberg			
LAW 7464	Legl Writing Asst.. for Credit	1.00	P	0.00
Instructor:	Jennifer Swezey			
LAW 7567	Poverty Law	2.00	P	0.00
Instructor:	Christopher Coleman			
LAW 7671	Topics Civil Rights Litigation	1.00	P	0.00
Instructor:	Phillip Cramer			
LAW 7905	Externship-In Nashville	3.00	P	0.00
Instructor:	Susan Kay			
LAW 8040	Constitutional Law II	3.00	P	0.00
Instructor:	Spring Miller			
	Sara Mayeux			

During the Spring 2020 semester, Vanderbilt University was affected by the global COVID-19 pandemic. Instructional methods were modified and temporary changes to grading policy were implemented, including adjustments to the options for pass/fail grading. For more information, see: <https://registrar.vanderbilt.edu/transcripts/transcript-key.php>.

	EHRS	QHRS	QPTS	GPA
SEMESTER:	14.00	0.00	0.00	0.000
CUMULATIVE:	60.00	42.00	145.40	3.461

Secure Electronic Harwood

Molly Harwood
 molly.harwood@vanderbilt.edu

STUDENT IS ELIGIBLE TO ENROLL, UNLESS OTHERWISE NOTED.
 SIGNATURE IS WHITE WITH A GOLD BACKGROUND.
 A RAISED SEAL IS NOT REQUIRED.

BART P. QUINET
 UNIVERSITY REGISTRAR
 Date: 12/17/2021



OFFICE OF THE UNIVERSITY REGISTRAR
NASHVILLE, TENNESSEE 37240



Page 2 of 2

Name : Molly Katherine Harwood
Student # : 000565843
Birth Date : 06/03

Information contained in this document is confidential and should not be released to a third party without the written permission of the student.
This transcript is printed on gold SCRIP-SAFE® security paper.
A black and white document is not official.

2020 Fall					
LAW	6749	Criminal Practice Clinic	4.00	A	16.00
Instructor:		Susan Kay			
LAW	7126	Crim Pro: Investigation	3.00	A	12.00
Instructor:		Christopher Slobogin			
LAW	7180	Evidence	4.00	B+	13.20
Instructor:		Susan Kay			
LAW	7395	Environmental Annual Rev	1.00	P	0.00
Instructor:		Michael Vandenberg			
		Linda Breggin			
LAW	7573	The Legal Profession	1.00	P	0.00
Instructor:		Spring Miller			
LAW	8400	Trial Advocacy	3.00	P	0.00
Instructor:		Wendy Tucker			
		James McNamara			

	EHRS	QHRS	QPTS	GPA
SEMESTER:	16.00	11.00	41.20	3.745
CUMULATIVE:	76.00	53.00	186.60	3.520

2021 Spring					
LAW	6759	Crim Prac Clinic Adv	2.00	P	0.00
Instructor:		Susan Kay			
LAW	7395	Environmental Annual Rev	1.00	P	0.00
Instructor:		Michael Vandenberg			
		Linda Breggin			
LAW	7561	Policing in the 21st Century	1.00	P	0.00
Instructor:		Arjun Sethi			
LAW	7600	Professional Respons.	3.00	A-	11.10
Instructor:		Kevin Klein			
LAW	8420	Adv Evid& Trial Advoc: Criminal	2.00	A	8.00
Instructor:		William Cohen			
		Richard Mcgee			
LAW	9100	Law and History Seminar	3.00	A-	11.10
Instructor:		Sara Mayeux			

	EHRS	QHRS	QPTS	GPA
SEMESTER:	12.00	8.00	30.20	3.775
CUMULATIVE:	88.00	61.00	216.80	3.554

----- NO ENTRIES BELOW THIS LINE -----

Secure Electronic Harwood

Molly Harwood
molly.harwood@vanderbilt.edu

STUDENT IS ELIGIBLE TO ENROLL, UNLESS OTHERWISE NOTED.
SIGNATURE IS WHITE WITH A GOLD BACKGROUND.
A RAISED SEAL IS NOT REQUIRED.

Bart P. Quinet

BART P. QUINET
UNIVERSITY REGISTRAR
Date: 12/17/2021



Vanderbilt University
Office of the University Registrar
PMB 407701
110 21st Avenue South, Suite 110
Nashville, TN 37240-7701
615-322-7701
university.registrar@vanderbilt.edu
registrar.vanderbilt.edu

Academic Calendar: The academic year consists of fall and spring semesters and a summer term. The Doctor of Medicine program is offered on a year term.

Academic Units: Credit hours are semester hours except in the Doctor of Medicine program. Credits in the Doctor of Medicine program are course- or rotation-based.

Accreditation: Vanderbilt University is accredited by the Southern Association of Colleges and Schools.

Release of Information: This document is released at the request of the student and in accordance with the Family Educational Rights and Privacy Act of 1974. It cannot be released to a third party without the written consent of the student.

Course Numbers (effective Fall 2015):

0000-0799 Non-credit, non-degree courses;
do not apply to degree program
0800-0999 Courses that will eventually be given credit
(e.g., study abroad)
1000-2999 Lower-level undergraduate courses

3000-4999 Upper-level undergraduate courses
5000-5999 Introductory-level graduate and professional courses
(including those co-enrolled with undergraduates)
6000-7999 Intermediate-level graduate and professional courses
8000-9999 Advanced-level graduate and professional courses
Additional information on course numbering is available at
registrar.vanderbilt.edu/faculty/course-renumbering/.

Course Numbers (prior to Fall 2015):

100- and 1000-level courses are primarily for freshmen and sophomores. May not be taken for graduate credit.
200- and 2000-level courses are normally for juniors and seniors. Selected courses may be taken for graduate credit.
300-, 3000-, and above-level courses are for graduate and professional credit only - unless special permission is granted.

Grading Systems:

For information about grading systems in place prior to the dates listed, visit registrar.vanderbilt.edu/transcripts/transcript-key/.

College of Arts and Science (A&S), effective Fall 1982;
Blair School of Music (BLR), effective Fall 1986;
Divinity School (DIV), effective Fall 1983;
Division of Unclassified Studies (DUS), effective Fall 1982;
School of Engineering (ENG), effective Fall 1991;
Graduate School (GS), effective Fall 1992;
Law School (LAW), effective Fall 1988;
School of Medicine (MED), Medical Masters and other Doctoral Programs, effective Fall 2010;
School of Nursing (NURS), effective Fall 2007;
Peabody College (PC) undergraduate, effective Fall 1990;
Peabody College (PC) professional, effective Fall 1992.

A+	4.3	LAW only
A+	4.0	Not in A&S, DIV (or BLR, PC as of Fall 2012)
A	4.0	
A-	3.7	
B+	3.3	
B	3.0	
B-	2.7	
C+	2.3	
C	2.0	
C-	1.7	
D+	1.3	Not in PC professional, NURS (or GS, MED as of Fall 2011)
D	1.0	Not in PC professional, NURS (or GS, MED as of Fall 2011)
D-	0.7	Not in PC professional, MED, NURS (or GS as of Fall 2011)
F	0.0	

Owen Graduate School of Management (OGSM)

Master of Accountancy, effective Fall 2011.		All Management Programs, effective Fall 2007.	
A	4.0	SP Superior Pass	4.0
A-	3.5	HP High Pass	3.5
B	3.0	PA Pass	3.0
B-	2.5	LP Low Pass	2.5
F	0.0	F Fail	0.0

School of Medicine (MED) Doctor of Medicine Program, effective 2003.

H	Honors	Superior or outstanding work in all aspects.
HP	High Pass	Completely satisfactory work with some elements of superior work.
P	Pass	Completely satisfactory work in all aspects.
P*	Marginal Pass	Serious deficiencies requiring additional work (temporary grade).
F	Fail	Unsatisfactory work.

Current and Cumulative Statistics:

EHRS Earned Hours
QHRS Quality Hours
QPTS Quality Points
GPA Grade Point Average
(calculated as GPA = QPTS/QHRS)

Other Symbols:

AB Absent from final examination (temporary grade)**
AU/AD Audit**
AW Audit Withdrawal**
CE Credit by Examination
CR Credit only (no grade due)
E Condition, with permission to retake exam (temporary grade)**
H Incomplete in Arts and Science Honors course (temporary grade)**
Honors in Divinity School**
I Incomplete (temporary grade)** +
IP In Progress (temporary grade)**
LP Low Pass (DIV only)
M Absent from final examination (temporary grade)**
MI Absent from final examination and incomplete (temporary grade)**
NC No credit toward current degree**
NO EQ Transfer or study abroad coursework with no Vanderbilt equivalent
P Pass**
PM Pass-Medical (GS only)
R Repeat of previous course
RC Previous trial of repeated course**
S Satisfactory**
U Unsatisfactory**
W Withdrawal**
WF Withdrawal while failing**
WP Withdrawal while passing**
X Grade unknown, hours earned awarded**

****** Does not affect grade point average. (Prior to Fall 2008, the AB, I, M, and MI grades were calculated as an F in A&S and PC.)
+ May be a permanent grade in DIV, GS, LAW, and MED.

UNIV: Courses offered in the UNIV subject are University Courses. The University Course initiative was developed to promote new and creative trans-institutional learning. For more information, please see vu.edu/university-courses.

For changes to this key since the last revision, please visit registrar.vanderbilt.edu/transcripts/transcript-key/.

LEGAL AID SOCIETY OF NASSAU COUNTY, NY

DISTRICT COURT BUREAU
40 Main Street, Hempstead, NY 11550
(516) 560-6400
FAX: (516) 572-1959
NCCC ONLY: (516) 560-6490

N. Scott Banks
Attorney in Chief

January 13, 2022

Barbara Raney
Bureau Chief

Colleen Baktis
Deputy Bureau Chief

To Whom It May Concern:

Sabato Caponi
Courtroom Supervisor

Staff Attorneys
Allison Castel
Daniel D'Lugoff
David Resnick
Hadassah Phillips
Jane Shin
Jillian Gardner
Karman Lam
Kyan Pepper
Stephanie Salomon
William Rigglin

District Court
Juvenile
Brian Shupak
Diana Gandiello
Diane Clarke

Domestic Violence
James Fisher
Zachary Simonetti

Parole Revocation
Unit
David Rosenfeld

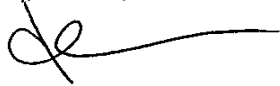
Law Graduates
Amanda Gordon
Dustin Boone
Frances Harvey
Gabriella Javaheri
James Lynch
Jeffrey Tyler
Kevin Dunshee
Molly Harwood
Natalie Shepherd
Samantha Estepa

Immigration Unit
Donna Zak
Michelle Caldera-Kopf

I am writing this letter on behalf of Molly Harwood who has been employed as a staff attorney with the Nassau County Legal Society since September 2021. Immediately upon her employment, Molly was eager to become a well versed and competent Legal Aid attorney. She was engaged and prepared during training; and then seamlessly transitioned into representing her clients in the courtroom. In her short time as an attorney, she has been a tireless advocate, effectively negotiating and plea bargaining on her client's behalf. She has appropriately strategized her cases, demonstrating her knowledge of criminal law and procedure and her ability to creatively argue the law. She is also an effective legal writer as she has successfully submitted motions on behalf of her clients which have been granted. Molly has also proven to be a formidable litigator with natural talent as she has effectively represented a client in a pre-trial suppression hearing.

Molly is also willing to go above and beyond to help her clients. She is a conscientious attorney who is compassionate and commitment to serving the best interests of her clients. Molly is always prompt, works diligently, and is a respectful professional who works cooperatively with her colleagues, court staff, prosecutors and Judges. Molly would be an asset as a Judicial Clerk and I highly recommend her for the position. If you have any questions, feel free to reach me at 516 560-6403.

Respectfully,



Barbara Raney

May 03, 2023

The Honorable Judith McCarthy
Charles L. Brieant, Jr. United States Courthouse
300 Quarropas Street, Room 434
White Plains, NY 10601-4150

Dear Judge McCarthy:

Molly Harwood is applying to be a law clerk working with you in your chambers, and I wholeheartedly support her application. I can think of no one whose abilities and interests align more closely with this position. I have come to know Molly well, first when she was a student in my class and later when we worked as a teaching team for a 1L Legal Writing class. As a result, I feel able to speak to the ways in which Molly could contribute significantly to your work.

During the academic year 2018-2019, Molly was a student in my section of the Legal Writing class required of all first-year students at Vanderbilt Law School. This was a small section of twenty students, and the course required frequent conferences; I had the opportunity to speak with Molly often that year, and I came to know of her background in social work and her commitment to helping people who are most vulnerable. She explained that she felt called upon to do more and that she believed obtaining a law degree would expand her ability to help these people.

From an academic standpoint, Molly is an outstanding student. For both fall semester 2018 and spring semester 2019, she did a wonderful job in our section. Her analysis and writing are excellent, and she was consistent and punctual in all class obligations. She particularly excelled in oral advocacy, and she was the top oralist in our section, winning the Lightfoot, Franklin & White Award for Best Oralist.

Then, the following academic year, Molly was selected as a Teaching Assistant for the Legal Writing course, which is also a notable accomplishment. TA applicants tend to be the most motivated and talented of the students in the course, and the application process is very competitive. The fact that the director of the course chose Molly is additional validation of her skills. I was fortunate that Molly was assigned to be my TA, and it was purely a pleasure to work with her as a teammate in teaching our students. The students themselves told me that they felt lucky to have Molly as a TA, because she invariably went the extra mile to help them, not just with citation and legal writing, but also with any question about adjusting to law school.

After the pandemic caused the abrupt end to our in-person instruction in March 2020, Molly made an especial effort to be available virtually to our students. In fact, even after classes ended, our section continued weekly meetings throughout the summer and until school resumed in August. During the worst of the pandemic in New York City, Molly moved back there, which caused me untold worry. She told me that she felt like she could do more there to help out. She worked for The Door, as a legal intern, providing a wide range of legal services to youth throughout the city. In her free time, she volunteered as a shopper for others whose age or underlying conditions made it too dangerous for them to go out. She also worked to distribute food to those suffering from food insecurity. Since graduating, Molly has worked at the Nassau County Legal Aid Society.

Just in case I may have made Molly sound too saintly, though, please be assured that she is funny and pragmatic and down-to-earth. Fundamentally, Molly is an extremely insightful, intelligent, and hardworking individual. I am confident that she would be a significant asset to you. It is without hesitation that I recommend her to work with you as a law clerk. If I may provide you with more information, please contact me at any time.

Best regards,

Barbara Rose
Instructor in Law
Vanderbilt University Law School

Barbara Rose - barbara.rose@vanderbilt.edu - 6153435805

May 03, 2023

The Honorable Judith McCarthy
Charles L. Brieant, Jr. United States Courthouse
300 Quarropas Street, Room 434
White Plains, NY 10601-4150

Dear Judge McCarthy:

It is my distinct pleasure to submit this letter in support of Ms. Harwood's application for a clerkship in your chambers. I knew Ms. Harwood while she was a student at Vanderbilt Law School and have kept up with her since her graduation last spring.

I first met Ms. Harwood during her first year of law school while she was a participant in the Social Justice Reading Group during the spring semester 2019. Of all the participants, I remember her comments most vividly. And the reason that I remember her is because of her thoughtful and incisive comments. Although the reading group was a non-credit-bearing extracurricular activity, Ms. Harwood was an active participant in the group and had clearly done all the assigned readings. She was able to add significantly to the discussion by incorporating her experiences as a social worker in New York prior to attending law school. But even more impressive was her intellectual curiosity and her desire to engage in the law and legal analysis.

I got to know Ms. Harwood very well when she was a student in the Criminal Practice Clinic (fall semester 2020) and Advanced Criminal Practice Clinic (spring semester 2021) that I teach. Working in the clinic during the pandemic posed enormous challenges to faculty members and students. Students had to be creative in finding ways to stay in contact and develop relationships with their clients while at the same time complying with Vanderbilt's COVID protocols which, in part, prohibited them from meeting with clients in person. In addition, the courts were essentially closed for significant periods of time during the school year. Ms. Harwood was totally committed to her clients and worked tirelessly to ensure that the attorney-client relationship was not adversely affected by the protocols. She maintained both a commitment to the clients and to the course, as well as a positive outlook, despite the uncertainty of that time.

Knowing Ms. Harwood's excellent skills and work ethic, I assigned her to a particular complicated case. Not only was the client facing federal as well as state charges (we were representing him on the state charges and a federal public defender was representing him on the federal charges) but there was well over 1000 pages of discovery, as well as significant video evidence, in the case. Ms. Harwood diligently reviewed the materials (several times to make sure she was completely schooled in them) and became the in-house expert on all the discovery and its location in the file. She excelled at collaborative discussions about the case and the possible avenues of investigation and research.

In the clinic, Ms. Harwood worked collaboratively with all the other students and earned their trust and respect. Once she agreed to take on a task, I never needed to worry about it or remind her. Her work product was excellent and she could be relied upon to complete tasks on time and professionally. Her research and writing were superb.

Ms. Harwood was also a student in the Evidence class I taught in the fall semester 2020. In that class, as well, I saw her commitment to understanding the nuances and effects of each rule. She didn't just want to learn Evidence so that she could do well in the course and pass the bar, she really wanted to understand both the substance of the rules and the policies behind them.

Ms. Harwood is also a delightful person with whom to interact. She is well-liked and well-respected by her classmates and she is a good listener as well as an interesting conversationalist. I always enjoyed spending time with her, whether discussing law or any random topic.

Ms. Harwood would be an excellent clerk. Her work ethic, the quality of her work and her commitment to excellence would be a credit to your chambers. She would get along well and work collaboratively with everyone in chambers and in the courthouse. In addition, Ms. Harwood would be an excellent representative of your chambers.

As you can see, I wholeheartedly and without any reservation recommend Ms. Harwood to you. Please let me know if I can provide you with any additional information.

Very truly yours,

Susan L. Kay

Susan Kay - susan.kay@vanderbilt.edu - 615-322-4151

Writing Sample
Omnibus Motion

To whom it may concern,

Please find my writing sample below. I submitted the following omnibus motion in March of 2022 in my role as a Legal Aid attorney in Nassau County, NY. The Prosecution conceded instead of filing an opposition so no decision was rendered by the court. I have removed the client's name and significant identifying information. Please contact me if you have any questions.

Thank you,

Molly Harwood
(847) 347-3184
molly.harwood@gmail.com

PROCEDURAL HISTORY

On March XX, 2021, Mr. XXXXXXXX was arrested and charged with violating Vehicle and Traffic Law (“V.T.L.”) §1192.4, Operating a Motor Vehicle Impaired by Drugs, an unclassified misdemeanor; V.T.L. § 1128.C, Slow Traffic: Fail to Keep Right, an infraction. *See* Exhibit A (Uniform Traffic Tickets and Simplified Information). Mr. XXXXXXXX was arraigned on a Desk Appearance Ticket on December XX, 2021 before the Honorable Judge Petrocelli, who released Mr. XXXXXXXX on his own recognizance.

The District Attorney’s Office filed a Certificate of Compliance and Certificate of Readiness with this Court on February 9, 2022, purporting to certify that the District Attorney’s office was in compliance with its statutory discovery obligations under C.P.L. § 245 and ready for trial. Defense Counsel never received a Certificate of Compliance or Readiness.

ARGUMENT

I. THE CASE SHOULD BE DISMISSED BECAUSE THE ACCUSATORY INSTRUMENT CHARGING MR. XXXXXXXX IS INSUFFICIENT.

Criminal prosecution requires a valid and sufficient accusatory instrument. *People v. Cruz*, 2017 NYLJ LEXIS 1160, *2 (2017); *People v. Smalls*, 26 N.Y.S. 3d 134, 44 N.E. 3d 209 (2016) (explaining this is a nonwaivable prerequisite to any criminal prosecution); *People v. Case*, 42 N.Y.2d 98, 99 (1977). An accusatory instrument is facially insufficient if it fails to establish, with non-hearsay, factual allegations, all the elements of the charged offense. C.P.L. §§ 100.40(1), 100.15(3) (“every element of the offense charged and the defendant's commission thereof must be supported by non-hearsay allegations of such information and/or any supporting depositions”) (emphasis added); *People v. Kalin*, 12 N.Y. 3d 225, 229 (2009); *People v. Casey*, 95 N.Y.2d 354, 361 (2000); *People v. Alejandro*, 70 N.Y. 2d 133 (1987). This is the called the “prima facie” case requirement. *Kalin*, 12 N.Y. 3d at 229.

When ruling on the sufficiency of an information, a court must accept the factual allegations as true. *Id.* However, the court is limited to reviewing the facts as they are set forth in the four corners of the accusatory document. *See People v Voelker*, 172 Misc 2d 564, 658 NYS2d 180 (Crim Ct, Kings County, 1997, Morgenstern, J.). Separate documents must be read separately. *See People v Grabinski*, 189 Misc. 2d 307, 731 NYS2d 583 (App Term, 2d Dept 2001). Conclusory language will not suffice as a substitute for evidentiary facts. *People v. Mackey*, 61 Misc.2d 799 (Suffolk Dist. Ct. 1969); *People v. Martes*, 140 Misc.2d 1034 (Kings Cty. Crim. Ct. 1988); *People v. Rodriguez*, 140 Misc.2d 1 (N.Y. Cty. Crim. Ct. 1988); *People v. Shelton*, 136 Misc.2d 644 (Bronx Cty. Crim. Ct. 1987).

Criminal Procedure Law section 100.40(2) provides that a supporting deposition when provided with a simplified traffic information is sufficient on its face when it “substantially conforms to the requirements of [C.P.L. § 100.25 (2)].” *See People v. Matozzo*, 47 Misc. 3d 1212(A) (Nassau Dist. Ct. 2015). In order to conform to the requirements of C.P.L. § 100.25 (2), a simplified traffic information and any attached supporting depositions must contain “allegations of fact, based either upon personal knowledge or upon information and belief, providing reasonable cause to believe that the defendant committed the offense or offenses charged.” C.P.L. § 100.25(2). Similarly, a Bill of Particulars is not a discovery device; however, when it is provided to Defense Counsel in conjunction with an instrument, it is considered with and held to the same standards as an accusatory instrument. *People v. Rose*, 8 Misc. 3d 184 *2 (Dist. Ct. Nassau Co. 2005) *citing* Peter Gerstenzang, *Handling the DWI Case in New York* §§ 20:56, 20:58 (2003-2004 ed). The charging document in the instant case is facially insufficient in regards to multiple charges; therefore, the Court must dismiss the case on the grounds that the accusatory instrument is insufficient.

a. **The Accusatory Instrument Charging Mr. XXXXXXXX With Driving With Ability Impaired By Drugs Is Facially Insufficient And Jurisdictionally Defective Because It Does Not Establish Every Element Of The Offense Charged.**

The accusatory instrument charging a violation of V.T.L. § 1192.4 must establish with non-hearsay factual allegations all four elements of Driving While Ability Impaired. The accusatory instrument must allege: (1) the defendant ingested a drug; (2) the drug ingested is one proscribed by Public Health Law (“P.H.L.”) § 3306; (3) after ingesting the drug, the defendant operated a motor vehicle; and (4) while operating the motor vehicle, the defendant’s ability to operate it was impaired by ingestion of the drug. *People v. Feyjoo*, 64 Misc. 3d 1207(A) (N.Y. City Crim. Ct. 2019); *Matozzo*, 47 Misc. 3d 1212(A) citing *People v. Kahn*, 160 Misc. 2d 594 (Nassau Dist. Ct. 1994).

If there are no factual allegations that the operator’s ability was impaired by the use of a drug proscribed under P.H.L. § 3306, then the accusatory instrument is insufficient. *See Feyjoo*, 64 Misc. 3d 1207(A); *People v. Grove*, 2011 NY Slip Op 51779(U), 938 N.Y.S. 2d 229, 229 (2d Dept. 2011). In *Feyjoo*, a driver charged with violating § 1192.4 stated that he had taken Gabapentin and was unaware that it would affect his driving abilities. 64 Misc. 3d 1207(A). The accusatory instrument in *Feyjoo* stated that the officer involved observed the individual to have “bloodshot, watery eyes, slurred speech, to be unable to remain awake or answer questions and unsteady on his feet upon exiting the vehicle.” *Id.* The court in *Feyjoo* found that as Gabapentin is not a controlled substance listed in P.H.L. § 3306, the accusatory instrument was insufficient. *Id.*

There are not universal indicators for drug use, unlike symptoms of intoxication; therefore, officer observation alone is not sufficient to provide the requisite reasonable cause required for a V.T.L. § 1192.4 charged in an accusatory instrument. *Matozzo*, 47 Misc. 3d 1212(A) citing *People v. Ortiz*, 6 Misc. 3d 1024(A) (Crim Ct. Bronx Co. 2004). In order to

establish what substance the defendant ingested, an element of V.T.L § 1192.4, the Prosecution must provide either a chemical analysis of the defendant's blood, an admission by the defendant, or analysis from a Drug Recognition Expert. *Feyjoo*, 64 Misc. 3d 1207(A). In *Matozzo*, the accusatory instrument stated that the defendant presented with glassy eyes, slurred speech, shakiness, unsteadiness on his feet, and small pupils. 47 Misc. 3d 1212(A). The court in *Matozzo* held there was nothing in the supporting deposition to provide reasonable cause to believe that the defendant's current state was due to a substance designated in P.H.L § 3306. *Id.*; see *People v. Felicia*, 52 Misc. 3d 212 (N.Y. Crim. Ct. 2016) (holding accusatory instrument sufficient when it stated that drug found in the driver's possession and that drug is included under P.H.L. § 3306 because possession is sufficient to create reasonable cause); *Rose*, 8 Misc. 3d 184 (finding that a written record of a Drug Recognition Expert is sufficient to provide reasonable cause).

The accusatory instrument charging Mr. XXXXXXXX never stated a drug of any kind; therefore, the accusatory instrument is insufficient. See *Feyjoo*, 64 Misc. 3d 1207(A); *Grove*, 2011 NY Slip Op 51779(U). In conjunction with the Simplified Traffic Information, the Prosecution provided a Supporting Deposition and Bill of Particulars. See Ex. A. The narrative included in the Supporting Deposition merely stated, "refer to bill of particulars." See Ex. A. The Bill of Particulars identified a number of observations included on the form as a checklist. In this case, the officers alleged that Mr. XXXXXXXX had glassy eyes, impaired speech, and impaired motor conditions. However, the Bill of Particulars never alleged what substance Mr. XXXXXXXX ingested. Like in *Matozzo*, there is no allegation concerning what drug caused these signs of alleged impairment, so there is no reasonable cause to believe that Mr. XXXXXXXX was impaired by a drug included in P.H.L. § 3306. See 47 Misc. 3d 1212(A).

The accusatory instrument neglects to include any of the required avenues of establishing

that Mr. XXXXXXXX was impaired by a drug proscribed the P. H. L. § 3306. The accusatory instrument stated that Mr. XXXXXXXX refused a blood test after consenting to a breathalyzer on site. *See* Ex. A. None of the charging documents include any statements regarding the name of an alleged drug, a Drug Recognition Expert's observations, or any admissions by Mr. XXXXXXXX himself. *See id.*; *Feyjoo*, 64 Misc. 3d 1207(A). *Felicia*, 52 Misc. 3d 212; *Rose*, 8 Misc. 3d 184; Ex. A.

The accusatory instrument is completely inadequate; therefore, it must be dismissed. One of the elements required, that the drug ingested in one proscribed by P.H.L. § 3306, is completely lacking as the type of drug is never alleged at all. V.T.L. § 1192.4; *Feyjoo*, 64 Misc. 3d 1207(A); *Matozzo*, 47 Misc. 3d 1212(A); *Kahn*, 160 Misc. 2d; *see* Ex. A. The other element, that the Defendant's ability to the operate the motor vehicle was impaired by ingestion of a drug is not addressed by anything more than conclusory boxes checked on a Bill of Particulars. *See* Ex. A. While there are references to another drug alleged in other documents, that particular drug, Gabapentin, is not proscribed by the Public Health Law, and the necessary factual allegations that must be provided are non-existent in this case. *See* P.H.L. § 3306; *Feyjoo*, 64 Misc. 3d 1207(A).

b. The Accusatory Instrument Charging Mr. XXXXXXXX With Slow Traffic: Fail Keep Right Is Facially Insufficient And Jurisdictionally Defective Because It Lacks Sufficient Factual Allegations To Establish The Violation Charged.

In order to be facially sufficient and jurisdictionally valid, a simplified traffic information charging a Defendant with Slow Traffic: Fail Keep Right in violation of VTL § 1128(c) must contain sufficient allegations showing that the named Defendant: (1) was in an area where official traffic control devices directed slow moving traffic to use designated lanes; and (2) that the driver did not obey the directions of every such signal, sign or marking. *See* V.T.L. §

1128(c). Here, the accusatory instrument stated, “observed op go from right most lane to center land to left lane then back to center land and the right lane multiple times.” *See* Ex. A. The documents included no statements regarding whether the highway has posted signage indicating that drivers cannot change lanes. None of the documents stated whether Mr. XXXXXXXX disobeyed any signage of any kind. *See* Ex. A. The allegation is simply that Mr. XXXXXXXX changed lanes multiple times, over an undisclosed period of time. There are no indications or additional charges suggesting these lane changes were unsafe in some way, against the stated laws of the road Mr. XXXXXXXX was on, or that this happened in quick succession. This allegation is facially insufficient; therefore, it should be dismissed.

II. THE DISTRICT ATTORNEY’S CERTIFICATE OF COMPLIANCE IS INVALID PURSUANT TO C.P.L. §§ 245.20 AND 245.50 AS THERE IS REMAINING UNDISCLOSED DISCOVERY MATERIAL.

Criminal Procedure Law section 245.20 sets forth that “when the prosecution has provided the discovery required by § 245.20(1) of this article...it shall serve upon the defendant and file with the court a certificate of compliance.” C.P.L. § 245.50(1). Such certificate of compliance must state “that after exercising due diligence and making reasonable inquiries to ascertain the existence of material and information subject to discovery, the prosecutor has disclosed and made available all known material and information subject to discovery.” C.P.L. § 245.20.

The statute creates a broad and non-exhaustive discovery disclosure requirement for the Prosecution. The legislature intended to establish an “open file” discovery standard. *People v. Soto*, 72 Misc. 3d 1153, 1155 (Crim. Ct. 2021) *quoting* William C. Donnino, Practice Commentary, McKinney's Cons Laws of NY, Criminal Procedure Law § 245.10 (“a prosecutor

who fails to engage in ‘open file’ discovery... may do so at his or her professional peril while also jeopardizing the viability of a prosecution”).

In order to adequately comply with the discovery requirements, the Prosecution must disclose “all known” materials as per the plain meaning of the statute. *People v. Adrovic*, 69 Misc. 3d 563, 572 n. 4, (Crim Ct. 2020). The Prosecution must actively ensure that there is a consistent “flow of information” between law enforcement, investigative personnel, and the District Attorney’s office “sufficient to place within [the prosecution’s] possession or control all material and information pertinent to the defendant and the offense or offenses charged.” § 245.55(1). The Prosecution cannot certify compliance if there are outstanding or uncollected materials not provided to Defense Counsel. Criminal Procedure Law section 245 sets no statutory deadline for Defense Counsel to challenge a Certificate of Compliance. *People v. Mauro*, 71 Misc. 3d 548, 551, (Cnty. Ct. 2021) (explaining that the statute is silent as to the timing and form of a motion to challenge a COC).

a. The Prosecution Filed an Improper Certificate of Compliance Under Subsection “c” of C.P.L. § 245.20(1).

Under C.P.L. § 245.20(c), the Prosecution is required to provide the names and contact information for all persons the Prosecution knows to have evidence or information relevant to any offense charged. This includes a designation as to which of those persons may be called as witnesses. § 245.20(c).

In this case, the Prosecution has failed to investigate the identity of all persons who have information or evidence relevant to any of the offenses. The Prosecution has failed to serve an Automatic Discovery Form in this case. The Prosecution did not provide a list of all the evidence provided to Defense Counsel, as they are required to do. Additionally, there is no indication as to who the People plan to call as a witness in this case. Until that initial requirement is fulfilled, the

Prosecution cannot certify compliance as they have not properly disclosed all known and required information to declare readiness for trial.

b. The Prosecution Filed an Improper Certificate of Compliance Under Subsection “e” of C.P.L. § 245.20(1).

Subsection “e” requires that the prosecution provide “all statements, written or recorded or summarized in any writing or recording... including all police reports, notes of police and other investigators, and law enforcement agency reports. This provision also includes statements, written or recorded or summarized in any writing or recording, by persons to be called as witnesses at pre-trial hearings.” C.P.L. § 245.20(1)(e).

The People have filed an improper Certificate of Compliance because the People have failed to provide all discoverable information pursuant to subsection “e” of the discovery laws. C.P.L. § 245.20(1)(e). Specifically, at the minimum, the People have failed to provide the blotters, CAD report, Mobile Transmission Data, PDCM 79, PDCM 248, a case report, the radio log, and all other State police discovery documents generated by any and all law enforcement personnel with evidence or information related to this case. The Prosecution did provide a Communication Record Request form that suggests that these pieces of evidence exist. *See* Exhibit B (Communication Record Request). The form indicated that there are CAD reports, radio runs, and Mobile Transmission Data available in this case and that law enforcement requested this evidence for discovery purposes; however, the evidence was not provided to Defense Counsel. Additionally, the Prosecution has failed to provide any notes or write-ups from any employee of the District Attorney’s Office regarding this matter, including Early Case Assessment Bureau write ups. *See* C.P.L. § 245.20(1)(e). For the foregoing reasons, it is respectfully submitted that this Court invalidate the Certificate of Compliance on the grounds that the Defendant has been denied access to statutorily required discovery under C.P.L. § 245.

III. THE CASE SHOULD BE DISMISSED BECAUSE MR. XXXXXXXX'S STATUTORY SPEEDY TRIAL TIME UNDER C.P.L. § 30.30 HAS ELAPSED.

Criminal Procedure Law section 30.30 guarantees criminal defendants the right to dismiss all charges against him when the Prosecution fails to answer ready for trial within a prescribed time period. When the offense charged is an unclassified misdemeanor punishable by up to a year of incarceration, the Prosecution must demonstrate that it is ready for trial within ninety days of the commencement of the criminal action. C.P.L. § 30.30 (1)(b). Operating a Motor Vehicle Impaired by Drugs in violation of V.T.L § 1192.4 is an unclassified misdemeanor punishable by up to one year in jail. Therefore, in the present case, the Prosecution must present a sufficient accusatory and declare ready for trial within ninety days of the first court date. *See* C.P.L. § 30.30(1)(b).

The Prosecution will be deemed ready for trial only when there has been an effective announcement of readiness within the time period required, which includes a proper filing of a Certificate of Readiness and Certificate of Compliance. C.P.L. § 245.50(3); § 30.30(5); *People v. Lobato*, 66 Misc 3d 1230(a) ** 4 (Crim. Ct, Kings County 2020). In a motion to dismiss, the Defendant need only show that the Prosecution was not ready for a hearing or trial, on the record or with sufficient notice to Defense Counsel, within the time period specified in the C.P.L. The accusatory instrument must then be dismissed unless the People establish statutory periods of exclusion that justify the delay and bring the Prosecution within the statutory period. *See*, C.P.L. §30.30(4); *People v. Berkowitz*, 50 N.Y.2d 333 (1980); *People v. Dean*, 45 N.Y.2d 651 (1978); *People v. Hawkins*, 79 A.D.2d 743 (1980).

In this case, the People have filed an illusory Certificate of Readiness and Certificate of Compliance. The People cannot be ready for trial based on the jurisdictional and facial insufficiencies in the accusatory instrument. While these insufficiencies can be cured, the

Prosecution must annex and affix a proper accusatory instrument within ninety days of the start of the case, which has not occurred in this case. Additionally, the Prosecution filed improper certifications in this case; therefore, any declaration of readiness made on the record was based on an improper Certification of Compliance and Readiness.

The laws around the new discovery requirements are still developing; however, the Nassau County District Court has now repeatedly held that Defense Counsel cannot meaningfully consent to an adjournment if the consent is based on an erroneous belief that the Prosecution complied with all discovery requirements. *See People v. Ramon Flores*, *4 (Dist. Ct. Nassau County, November 19, 2021, Engel, A., Docket No. CR- 011324-20NA), attached hereto as Exhibit C; *People v. Laclair*, *8 (Dist. Ct. Nassau County, September 22, 2021, O'Donnell, C., Docket No. Cr-010539-20NA), attached hereto as Ex. C (finding that the "erroneous belief" that the People were compliant meant that the Defense Counsel could not "meaningfully request or consent" to adjournments). In this case, any adjournments that Defense Counsel consented to were based on the improper belief that the Prosecution was actually and immediately ready for trial with a proper and adequate accusatory instrument.

c. Under C.P.L. § 30.30(5-a), the prosecution's statement of readiness was invalid due to the defects in the accusatory instrument.

Criminal Procedure Law section 170.30(1)(a) provides that an information may be dismissed if "it is defective within the meaning of section 170.35." Pursuant to C.P.L. § 30.30(5-a), a Certificate of Readiness "shall not be valid unless the prosecuting attorney certifies that all counts charged in the accusatory instrument meet the requirements of sections 100.15 and 100.40 of this chapter and those counts not meeting the requirements of sections 100.15 and 100.40 of this chapter have been dismissed." C.P.L. 30.30(5-a).

Upon filing a Certificate of Readiness and a Certificate of Compliance, the Prosecution must actually be ready for trial in order for the announcement of readiness to be effective. *People v. Brown*, 28 NY3d 392 (2016). Readiness means that the Prosecution has completed everything required to bring the case to trial “immediately.” *People v. Robinson*, 171 AD2d 475, 477 (1st Dept 1991); *People v. England*, 84 N.Y. 2d 1, 4 (1994); *People v. Kendzia*, 64 N.Y. 2d 331, 337 (1985). The readiness requirement was added by legislature to abrogate the prior practice by the prosecution of consistently declaring ready for trial with facially insufficient counts included in the accusatory instrument. *Ramon Flores*, *4 (Engel, A.) Ex. C. The legislature intended to provide the prosecution with a “bright-line rule” as to when the District Attorney can answer ready for trial. *Id. quoting People v. Young*, 72 Misc. 3d 1203(A) (Crim. Ct. N.Y. Co. 2021) (holding the People had not met their burden for trial readiness when the accusatory instrument remained facially insufficient) (vacating the People’s Certificate of Compliance as illusory).

Prior to January 1, 2020, it was up to the Defense to challenge the sufficiency of an accusatory instrument; “now, under C.P.L. § 30.30(5-a), it is the burden of the People to prove the sufficiency of each count of the information.” *People v. Ramirez-Correa*, 2021 NY Slip. Op. 21040 (Crim Ct. Queens County, Feb. 25, 2021); *People v. Lavrik*, (Crim. Ct. NY County, April 22, 2021, Maldonado-Cruz, J., Docket No. Cr-033832-19NY).

In the present case, it has been more than ninety days since the start of the case and the accusatory instrument remains insufficient. On December 16, 2021, Mr. XXXXXXXX was arraigned on the charge. The People were not compliant with their discovery obligations and were not ready for trial on that date. At that time, the case was adjourned to January 11, 2022 for discovery compliance at the People’s request. The defense did not consent to this adjournment. Therefore, **twenty-six (26)** days are chargeable to the People.

On January 11, 2022, the People were not compliant with their discovery obligations and were not ready for trial. At that time, the case was adjourned to February 28, 2022 for discovery compliance at the People's request. The Defense did not consent to this adjournment. Therefore, **forty-eight (48)** days are chargeable to the People.

According to the Court's file, the Prosecution filed their Certificate of Readiness and Certificate of Compliance on February 9, 2022. The Prosecution also represented to the Court that it filed Certificates on February 9, 2022. However, the District Attorney could not have been ready on that date due to the multiple defects in the accusatory instrument. Additionally, Defense Counsel was not served a Certificate of Readiness nor a Certificate of Compliance, and remains not in receipt of a Certificate of Readiness and Compliance. On the next court date, February 28, 2022, Defense Counsel consented to an adjournment for a Mapp, Huntley, Henshaw, Dunaway Hearing based on the presentation by the Prosecutor that he was indeed ready for trial and had completely complied with his discovery obligations. The case was adjourned to March 30, 2022 for the hearings. Defense Counsel consented to the adjournment as it was the Defense's request to proceed to hearings on this case; however, the consent was based on an incorrect belief that the Prosecution filed proper certificates. The Prosecution has made no effort to correct the certification in the time between certifying and the date of Defense Counsel filing this motion. As the certification was improper and illusory, upon filing this motion an additional **eighteen (18)** days are chargeable to the People.

As per the previously stated insufficiencies in the accusatory instrument, the People's Certificate of Readiness and Certificate of Compliance are invalid. Therefore, as of the date of this filing (March 18, 2021) the People still are not compliant with their discovery obligations and are not ready for trial. Cumulatively, **ninety-two (92) days of speedy trial time is**

chargeable to the People in the above-captioned action from December 16, 2021 until March 18, 2022. This exceeds the 90-day time limit the People are given by C.P.L. §30.30(1)(b) to be ready to proceed to trial on an A misdemeanor, or its equivalent. There are no statutory periods of exclusion to which the People can point to justify their delay in commencing the prosecution of Mr. XXXXXXXX. For those reasons, it is respectfully submitted that this court dismiss the case on the ground that the Defendant has been denied his statutory right to a speedy trial under CPL §30.30(5-a).

b. Under C.P.L. § 30.30, The Prosecution’s Statement Of Readiness and Compliance Was Invalid Due To The Failure To Comply With All Discovery Obligations.

As stated above, the Prosecution must be actually and immediately ready for trial upon filing a Certificate of Readiness and Compliance. *Brown*, 28 N.Y. 3d at 392. The Prosecution cannot be ready for trial if the prosecution has not adequately complied with its discovery obligations. *Ramon Flores*, *4 (2021); *Laclair*, *8 (2021); Ex. C. An illusory certification allows the Prosecution to continue the practice of trial by surprise, which the reforms to the discovery laws in 2020 expressly sought to end. By not providing an Automatic Discovery Form, a list of all the discovery provided, or any indication of who would be testifying at trial, the Prosecution created an inherent trial by surprise scenario. Additionally, the Prosecution’s discovery openly alludes to the existence of evidence like radio runs, CAD reports, and Mobile Data Transmissions, and yet the Prosecution did not provide these items to Defense Counsel.

In the instant case, the time charged, as outlined above, is beyond the ninety-day requirement under C.P.L. § 30.30. There are no statutory periods of exclusion to which the People can point to justify the delay in complying with discovery requirements within the ninety days allotted. For the reasons outlined above, due to the Prosecution’s failure to comply with the

discovery statute, it is respectfully submitted that this Court dismiss the case on the ground that Mr. XXXXXXXX has been denied his statutory right to a speedy trial under C. P. L. §30.30(1)(b).

IV. RESERVATION OF RIGHTS

Mr. XXXXXXXX respectfully reserves the right, pursuant to C.P.L. §§ 255.20(2) and (3), to make further motions based upon information now unknown to the defense but revealed by the prosecution's additional discovery, the Court's decision as to the instant motions, and any further developments in this case. Defendant reserves the right to be prosecuted only pursuant to a legally sufficient misdemeanor Information. Defendant does not waive that right by filing this motion. *People v. Weinberg*, 34 N.Y.2d 429 (1974).

WHEREFORE, the defendant respectfully requests this Court to grant the relief sought herein and reserve to defendant the right to amend or supplement this motion for such other and further relief as this Court may deem just and proper.

Applicant Details

First Name **Shahnoor**
 Last Name **Khan**
 Citizenship Status **U. S. Citizen**
 Email Address shahnoor.khan@student.american.edu
 Address

Address
Street
3401 38th Street nw
City
Washington
State/Territory
District of Columbia
Zip
20016
Country
United States

Contact Phone Number **9175657906**

Applicant Education

BA/BS From **State University of New York-College at New Paltz**
 Date of BA/BS **May 2020**
 JD/LLB From **American University, Washington College of Law**
http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=50901&yr=2010
 Date of JD/LLB **May 20, 2023**
 Class Rank **10%**
 Law Review/Journal **Yes**
 Journal(s) **American University Law Review**
 Moot Court Experience **Yes**
 Moot Court Name(s) **U.C. Davis Asylum & Refugee Law Competition**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

Spratt, David
dspratt@wcl.american.edu
202-274-4059
Weitz, Bellanne
Bellanne.Weitz@tsa.dhs.gov
202-821-3576
Seth, Grossman
sethg@american.edu
Hamilton, Rebecca
hamilton@wcl.american.edu
202-274-4241
Figley, Paul
pfigley@wcl.american.edu
202-274-4316
Fairfax, Roger
rogerfairfax@wcl.american.edu

References

ROBIN COHEN LA-VALLE, Dean of Students, State University of
New York at New Paltz
Email: cohenr@newpaltz.edu
Phone: (845) 257-3261

ROGER FAIRFAX, JR., Dean of Students, AU Washington College of Law

Email: cohenr@newpaltz.edu

Phone: (845) 257-3261

PAUL FIGLEY, Professor of Law, AU Washington College of Law

Email: pfigley@wcl.american.edu

Phone: (202) 274 -4316

SAMANTHA GOLDSTEIN, Nominations Counsel, Office of Legal Policy - U.S. Department of Justice

Email: samantha.Goldstein@usdoj.gov

Phone: (202) 427-2639

SETH GROSSMAN, Adjunct Professor of Law, AU Washington College of Law

Email: sethg@american.edu

Phone: (202) 885-2386

REBECCA HAMILTON, Associate Professor of Law, AU Washington College of Law

Email: hamilton@wcl.american.edu

Phone: (202) 274-4241

SUSAN INMAN, Senior Counsel, Office of Legal Policy - U.S. Department of Justice

Email: Susan.D.Inman@usdoj.gov

Phone: (202) 549-1860

NANCY KASSOP, Professor, State University of New York at New Paltz

Email: kassopn@newpaltz.edu

Phone: (845) 257-3544

DAVID H. SPRATT, Associate Director of the Legal Rhetoric Program, AU Washington College of Law

Email: dspratt@wcl.american.edu

Phone: (202) 274-4059

DR. PATRICIA SULLIVAN, Director of the Honors Program, State University of New York at New Paltz

Email: sullivap@newpaltz.edu

Phone: 845-257-3456

BELLANNE WEITZ, Supervisory Attorney, TSA - U.S. Department
of Homeland Security

Email: bellanne.weitz@tsa.dhs.gov

Phone: (718) 340-6837

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

SHAHNOOR KHAN

New York, NY • (917) 565 7906 • shahnoor.khan@student.american.edu • linkedin.com/in/shahnoorkhan

May 31, 2023

The Honorable Magistrate Judge Judith C. McCarthy
The Hon. Charles L. Brieant Jr. Federal Building and United States Courthouse
300 Quarropas St.
White Plains, NY 10601-4150

Dear Judge McCarthy,

As the former Editor-in-Chief of the flagship publication at the American University Washington College of Law, I am writing to apply for a 2024–2025 clerkship in your chambers. I will take the New York Bar Exam this July, and I will begin my legal career as an associate at the New York office of Ropes & Gray LLP this October.

Research, drafting, editing, advocacy, and leadership consumed the entirety of my law school career. During my first year, I competed for and successfully obtained a spot on the Moot Court Honor Society. Shortly thereafter, I was elected to direct the Weschler First Amendment National Moot Court Competition, hosted by the Washington College of Law in October 2021. I went on to serve as a Research Assistant, Teaching Assistant, and Dean's Writing Fellow. During my time as Dean Fairfax's Research Assistant, I researched and wrote about criminal law and procedure and edited his journal articles, casebooks, and treatises.

When I became Editor-in-Chief of the *American University Law Review* during my second year of law school, the responsibilities began seconds after the congratulatory call concluded. I was thrust into the position while balancing my academic course load, comment writing, Teaching Assistant, and Writing Fellow responsibilities. I was twenty-two when elected, making me the youngest person to ever serve as Editor-in-Chief of the *Law Review*. I was also the first Muslim ever elected to this position. I led a staff of over one hundred students; advocating for such a large group put my analytical skills to the test repeatedly, whether I was communicating with advertisers, authors, sponsors, printing companies, or even the law school administration, which oftentimes included my own professors. My *Law Review* comment was selected for publication just after my second year ended, and it was published during my third year. Serving as both an Editor-in-Chief and author provided me with a multifaceted approach to the editing process; I focused on consistency and author voice while upholding the core tenants of a well-supported legal argument. The position required over two thousand hours, around half of which focused on revising, editing, and Bluebooking articles, forewords, notes, and comments. I exceeded my obligations as Editor-in-Chief while managing my academic courseload, enabling me to graduate *magna cum laude* and receive the American University's Outstanding Graduate Award. When it comes to fulfilling my commitments, I have a simple mantra: breathe, prioritize, and execute.

I am a New York native with the skills required to be an effective judicial clerk, as evidenced by my success in balancing my many law school commitments and responsibilities. I work well under pressure and have both a positive and professional attitude, whether I am working independently or cooperatively. I would be grateful for the opportunity to work in your chambers. Thank you for your time and consideration.

Very Respectfully,



Shahnoor Khan

SHAHNOOR KHAN

New York, NY • (917) 565 7906 • shahnoor.khan@student.american.edu • linkedin.com/in/shahnoorkhan

EDUCATION

AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW, Washington, D.C. Aug. 2020–May 2023

Juris Doctor | *magna cum laude* | GPA: 3.82 (Top 10%) | Order of the Coif | Class Rank: 24/311

Law Review: *Editor-in-Chief, American University Law Review* | *Law Review Representative*, Joint Journal Committee

Moot Court: *Wechsler National First Amendment Competition Co-Director*, Moot Court Honor Society

Awards: Outstanding Graduate Award | *Highest Grade Designation*, Criminal Law | *Highest Grade Designation*, Legal Drafting: Family Law

Positions: *Teaching Assistant*, Criminal Law | *Dean's Writing Fellow*, Legal Research and Writing Program | *Research Assistant to Professor Rebecca Hamilton*, International Law | *Designated Notetaker*, National Security Law: Surveillance and Secrecy

Activities: *Member*, ADVANCE First Generational Law Students Coalition | *Member*, Asian and Pacific Islanders Law Student Association | *Treasurer*, Muslim Law Students Association | *Member*, Phi Alpha Delta Law Fraternity | *Member*, Women's Law Association

Publication: *Spider-Man: Work from Home and Retain No Copyright Under the Instance and Expense Test*, 72 Am. U. L. Rev. 657 (2022).

STATE UNIVERSITY OF NEW YORK AT NEW PALTZ, New Paltz, NY Aug. 2017–May 2020

Bachelor of Arts in International Relations and Political Science | *magna cum laude* | Program Rank: 3rd

Positions: *Research Assistant to Dr. Robin Jacobowitz*, Benjamin Center for Public Policy Initiatives | *Researcher*, United Nations Semester Program | *Peer Academic Advisor*, University Career Resource Center

EXPERIENCE

ROPES & GRAY, LLP, New York, NY

Litigation Associate

Incoming Oct. 2023

Summer Associate

May 2022–Jul. 2022

- Conducted patent law research and analysis and drafted and presented findings to Intellectual Property practice group.
- Engaged in document review and researched New York law applicable to a contested *pro bono* adoption matter.
- Drafted summary of terms for client engaged in transaction; reviewed due diligence materials for real estate transaction and drafted memorandum summarizing findings; coordinated review of client's intellectual property ownership.

WASHINGTON COLLEGE OF LAW, OFFICE OF THE DEAN, Washington, D.C.

Research Assistant to Dean Roger Fairfax, Jr.

May 2022–May 2023

- Conducted research and drafted analytical memoranda on criminal law and procedure for casebook and journal articles.

UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.

Legal Extern, Office of Legal Policy

Aug. 2021–Dec. 2021

- Completed vetting assignments for federal judges prior to their nomination.
- Performed research and analysis regarding Violence Against Women Act and drafted death penalty-related proposals.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, New York, NY

Legal Intern, Field Operations at the Transportation Security Administration

May 2021–Aug. 2021

- Conducted Fourth Amendment research and analysis related to DHS policy and standard operating procedures.
- Analyzed transportation and national security incidents at federal checkpoints, searching for trends and potential threats.
- Reviewed potential civil enforcement remedies and advised on remedies appropriate to ongoing matters.

VARSITY TUTORS, Virtual

LSAT Instructor/Law School and Graduate School Admissions Counselor

May 2020–May 2021

SUNY NEW PALTZ, OFFICE OF CAMPUS SUSTAINABILITY, New Paltz, NY

Leader of the Sustainability Implementation Team

June 2019–May 2020

- Oversaw implementation of UN Sustainable Development Goals, coordinating with neighboring towns and state offices.

ADDITIONAL INFORMATION

Languages: Urdu (conversant), Hindi (conversant), and French (beginner).

Interests: basketball, boxing, photography, and stand-up comedy.

KHAN SHAHNOOR K 4431138 11/19

05/28/23

1 OF 1

AMERICAN UNIVERSITY

WASHINGTON, D.C.

FALL 2020

LAW-501	CIVIL PROCEDURE	04.00	A-	14.80
LAW-504	CONTRACTS	04.00	A-	14.80
LAW-516	LEGAL RHETORIC I			
	RESEARCH & WRITING I	02.00	B+	06.60
LAW-522	TORTS	04.00	B+	13.20
	LAW SEM SUM: 14.00HRS ATT 14.00HRS ERND 49.40QP 3.52GPA			

SPRING 2021

LAW-503	CONSTITUTIONAL LAW	04.00	A	16.00
LAW-507	CRIMINAL LAW	03.00	A	12.00
LAW-517	LEGAL RESEARCH & WRITING II			
	RESEARCH & WRITING II	02.00	A	08.00
LAW-518	PROPERTY	04.00	A-	14.80
LAW-550	LEGAL ETHICS	02.00	A-	07.40
	LAW SEM SUM: 15.00HRS ATT 15.00HRS ERND 58.20QP 3.88GPA			

FALL 2021

LAW-508	CRIMINAL PROCEDURE I	03.00	A	12.00
LAW-635	NATIONAL SECURITY LAW	02.00	A	08.00
LAW-769	EXTERNSHIP SEMINAR	02.00	A	08.00
LAW-803FA	MOOT COURT EXECUTIVE BOARD	01.00	P	00.00
LAW-847	APPELLATE ADVOCACY	03.00	A	12.00
LAW-899	EXTERNSHIP FIELDWORK	03.00	P	00.00
	LAW SEM SUM: 14.00HRS ATT 14.00HRS ERND 40.00QP 4.00GPA			

SPRING 2022

LAW-633	EVIDENCE	04.00	A	16.00
LAW-719B1	FALSE CLAIMS IN HEALTHCARE IND	01.00	A	04.00
LAW-795CI	CONGRESSIONAL INVESTIGATIONS	01.00	A	04.00
LAW-796S	LAW REVIEW I	02.00	P	00.00
LAW-849C	LEGAL DRAFTING: CORPORATE	02.00	A-	07.40
LAW-871SC	MOOT COURT COMPETITION	02.00	P	00.00
LAW-962A	LICENSING INTELLECTUAL PROP.	03.00	A-	11.10
	LAW SEM SUM: 15.00HRS ATT 15.00HRS ERND 42.50QP 3.86GPA			

FALL 2022

LAW-642	ENTERTAINMENT LAW	03.00	A-	11.10
LAW-651	LAWYER BARGAINING	03.00	A	12.00
LAW-680	AMERICAN POLITICAL PROCESS	03.00	B+	09.90
LAW-849A	LEGAL DRAFTING: CONTRACTS	02.00	A	08.00
LAW-896	LAW AND THE VISUAL ARTS	02.00	A	08.00
	LAW SEM SUM: 13.00HRS ATT 13.00HRS ERND 49.00QP 3.76GPA			

AMERICAN UNIVERSITY

WASHINGTON, D.C.

SPRING 2023

LAW-650	INTERVIEWING AND COUNSELING	03.00	A	12.00
LAW-749	WHITE COLLAR CRIME	03.00	A	12.00
LAW-793	ADVANCED LEGAL ANALYSIS	03.00	A	12.00
LAW-798S	LAW REVIEW EDITORIAL BOARD	04.00	P	00.00
LAW-849B	LEGAL DRAFTING: FAMILY LAW	03.00	A	12.00
	LAW SEM SUM: 16.00HRS ATT 16.00HRS ERND 48.00QP 4.00GPA			

AMERICAN UNIVERSITY

WASHINGTON, D.C.

DEGREE AWARDED:

JURIS DOCTOR
DEGREE DATE:
05/20/23
HONORS:
MAGNA CUM LAUDE
JD CUM SUM: 87.00HRS ATT 87.00HRS ERND 287.10QP 3.82GPA

END OF TRANSCRIPT

AMERICAN UNIVERSITY

WASHINGTON, D.C.

AMERICAN UNIVERSITY

WASHINGTON, D.C.

AMERICAN UNIVERSITY

WASHINGTON, D.C.

AMERICAN UNIVERSITY

WASHINGTON, D.C.

AMERICAN UNIVERSITY
WASHINGTON, DC

AMERICAN UNIVERSITY
WASHINGTON, DC

AMERICAN UNIVERSITY
WASHINGTON, DC

AMERICAN UNIVERSITY
WASHINGTON, DC

AMERICAN UNIVERSITY
WASHINGTON, DC

AMERICAN UNIVERSITY
WASHINGTON, DC

AMERICAN UNIVERSITY
WASHINGTON, DC

AMERICAN UNIVERSITY
WASHINGTON, DC

AMERICAN UNIVERSITY
WASHINGTON, DC

AMERICAN UNIVERSITY
WASHINGTON, DC

AMERICAN UNIVERSITY
WASHINGTON, DC

AMERICAN UNIVERSITY
WASHINGTON, DC

Official Academic Transcript from:

STATE UNIVERSITY OF NEW YORK AT NEW PALTZ
RECORDS AND REGISTRATION
500 HAWK DRIVE
WOOSTER HALL, ROOM 115
NEW PALTZ, NY 12561

TELEPHONE: 845-257-3100

Official Academic Transcript of:

SHAHNOOR KHAN
Transcript Created: 27-Dec-2020

Requested by:

SHAHNOOR KHAN
78 PHILLIPSBURG RD
GOSHEN, NY 10924-6910

E-Mail: khans21@hawkmall.newpaltz.edu



Document Type: THIRD-PARTY SECURE PDF

Intended Recipient:

SHAHNOOR KHAN
78 PHILLIPSBURG RD
GOSHEN, NY 10924-6910

E-Mail: shahnoor.khan@student.american.edu

Delivered by:

CREDENTIALS SOLUTIONS, LLC / TRANSCRIPTSNETWORK
Under Contract To:
STATE UNIVERSITY OF NEW YORK AT NEW PALTZ
Order Number: 0M4741541- 1
Telephone: (847) 716-3005

Statement of Authenticity

This Official Academic Transcript in Portable Document Format (PDF) was requested by the individual identified above in compliance with the provisions of the Family Educational Rights and Privacy Act of 1974 as Amended and in conformance with the prescribed ordering procedures of State University of New York at New Paltz who has contracted with Credentials Solutions, LLC of Deerfield, IL for electronic delivery of Official Academic Transcripts in PDF form via Credentials' TranscriptsNetwork(tm). You may verify the authenticity of our relationship with State University of New York at New Paltz by visiting their website at <https://www.newpaltz.edu/registrar/obtaining-transcripts/#d.en.74980>.

Colleges and Universities

If you are an accredited post-secondary academic institution, please be advised that you are receiving this transcript as a "Third-Party" receiver. Since you are not registered in our TranscriptsNetwork or eScrip-Safe network, additional security provisions have been added to this document to prevent content copying or alteration. You also are not permitted to print the document without watermark protections or add notations to the document when saving to your student information system. Should you wish to receive future documents through our electronic networks without these additional security features, please register your institution at <https://escrip-safe.com/signup>. Please note that there is no cost to be a Receiving Institution.

Privacy and Other Information

This Official Academic Transcript is for delivery to the above-named "Intended Recipient". If you are not the "Intended Recipient", please notify the Records and Registration at State University of New York at New Paltz. You are not permitted to copy or alter this document. You may not forward this document or disclose its contents to any person or organization other than the "Intended Recipient" without the express written permission of the student. If this document is copied or printed, the words "PRINTED COPY" will appear in the replicated transcript image. You may verify the authenticity of this electronic document and have us independently certify that the document has not been altered since its creation by going to <https://www.credentials-inc.com/cgi-bin/cicgipdf.pgm?VALID> and following the instructions for transcript certification.

In the interest of security and privacy, we delete this Official Academic Transcript from our server 48 hours after it is initially downloaded excluding weekends and holidays. If a replacement is subsequently needed, the requesting party must order another transcript from State University of New York at New Paltz. If you have any questions about this document please contact Credentials Customer Service at (847) 716-3005. Our operators are available from 7:00 am to 7:00 pm Monday through Friday (Central Time).

State University of New York at New Paltz
Student Co-Curricular Transcript

PRINTED COPY
Shahnoor Khan

PRINTED COPY
Enrollment Date: 08/2017
Anticipated Graduation Date: 05/2020

Academic Related Experiences

Internship for Academic Credit	07/2018 - 11/2018	James Skoufis For State Senate (Newburgh, NY)
Communication Skills, Ethical Reasoning, Leadership Skills, Social Responsibility, Teamwork		

Campus Committee Membership

Sustainability Committee of the Academic Senate	02/2018 - 05/2018	Committee Member
Communication Skills, Ethical Reasoning, Social Responsibility, Teamwork		
Dean of Student's Office	02/2018 - 05/2018	Campus Judicial Board Member
Ethical Reasoning, Leadership Skills, Social Responsibility		

Honors and Awards

Student Affairs	05/2020	Distinguished Senior in Student Affairs Award
Communication Skills, Cultural Knowledge, Leadership Skills, Social Responsibility		

Leadership Activities

Office of Campus Sustainability	06/2019 - 05/2020	Sustainability Ambassador
Communication Skills, Leadership Skills, Social Responsibility, Teamwork		
Honors Program	08/2018 - 12/2018	Peer Mentor
Communication Skills, Cultural Knowledge, Ethical Reasoning		

Student Government and Organizations

Student Association	12/2017 - 12/2018	Senator
Cognitive Skills, Ethical Reasoning, Leadership Skills, Social Responsibility, Teamwork		
SUNY New Paltz Chapter of New York Blood Center Volunteers	10/2017 - 05/2021	President
Communication Skills, Financial Management, Leadership Skills, Social Responsibility, Teamwork		
The Honors Program	08/2017 - 05/2021	Member of Honors Program Cohort
Cognitive Skills, Communication Skills, Ethical Reasoning, Reading and Writing Proficiency, Social Responsibility		

PRINTED COPY

PRINTED COPY

PRINTED COPY

PRINTED COPY

Office of Records and Registration - State University of New York at New Paltz
1 Hawk Drive, New Paltz, NY 12561-2439

Overview

The Co-Curricular Transcript (CCT) was established in 2011. A 2nd generation of Learning Outcomes was introduced in 2015 with the original skills areas being retired. The CCT provides an opportunity for students to track and manage their out of the classroom experiences. Students select from registered experiences and must request the experience be validated by the a college official. An experience not validated by a campus official is not included. Students are encouraged to broaden their skills by participating in a broad range of experiences. Students may select up to five (5) skills to each listing as the critical areas of learning gained. Experiences are listed by activity type with the most recent experiences listed first in each category.

TYPES OF ACTIVITIES

Academic Related Experiences: These experiences must have taken place on the New Paltz campus and sponsored by a campus employee (faculty and staff member).

Campus Committee Membership: Academic or Administrative Committees student(s) may have served on

Community Service: on campus experiences only & #8211; Make a Difference Day, Clean Sweep, Admissions CREW, etc.

Honors and Awards: Honor Societies, Club and Leader Awards, Who's Who of College Students, Departmental Certificates, and Other Campus Achievements

Leadership Activities: OL, RA, Ambassador, Mentor, Advocate, Team Captain, Manager, etc.

Performance/Show: Theatre, Dance, or Art performances/shows in which student(s) held a key role

Student Government and Organizations: Club President, Club Treasurer, Senator, Council Representative, etc.

LEARNING OUTCOMES (Enhanced and/or Introduced July 2015)

Cognitive Skills: Engaged in informed debate, principled dissent, critical thinking/analysis, problem solving, and acceptance/appreciation of multiple perspectives.

Communication Skills: Engaged in activities which improved my verbal, non-verbal, and listening skills. (May also include marketing and promotion experience.)

Computer & Technology Skills: Increased my information literacy through interaction with software, databases, audio/visual technology, and other technologies.

Cultural Knowledge: Developed and engaged in a deeper understanding of global communities and cultures other than my own.

Ethical Reasoning: Made ethical decisions regarding the best interest of the group and greater community without trying to advance one's own agenda.

Financial Management: Improved my knowledge and experience with managing/planning budgets and finances.

Leadership Skills: Improved my ability to lead, interact, represent, and inspire others, as well as, the ability to delegate and provide critical feedback to members of a group.

Reading and Writing Proficiency: Increased my ability to read and interpret literature/documents to increase knowledge in a subject area; increased my ability to write proficiently without spelling, grammar, or comprehension errors.

Social Responsibility: Developed an awareness and commitment to social justice, civic engagement, personal responsibility and equitable treatment of others.

Teamwork: Formed mature, respectful, professional and collaborative relationships with others. Worked with a group of people for an extended period and developed the ability to trust and be trusted for the common goal of the team.

RETIRED SKILLS AND OUTCOMES (Retired July 2015)

Accuracy/Detail Oriented: Gained logistical expertise and able to review, manage, and complete tasks with precision, mindful of the little details.

Critical/Analytical Thinking: Processed a situation from multiple perspectives to determine a course of action.

Diversity Awareness: Developed and engaged in a better understanding of underrepresented groups, stereotypes, privilege, etc.

Global Understanding: Enhanced knowledge of international relations, global communities, how they interact and relate to each other.

Learns Effectively on Own: Sought out and did research, gathered information from multiple sources without instruction or supervision.

Marketing and Promotion: Developed a campaign to promote a group, event, or project.

Problem Solving: Reviewed a challenge and developed, implemented, and completed a strategy to resolve the conflict or issue at hand.

Read Comprehensively: Read, scanned and interpreted literature and documents effectively to gain knowledge in the subject area.

Takes Lead on Projects: Oversaw, motivated, delegated, and provided feedback to a group of people working together for a common goal.

Time Management: Balanced a variety of tasks and projects effectively to completion by deadlines and balanced work, school, and personal life without compromise.

Verbal Communication: Engaged in a conversation, dialogue, or debate with others while listening & soundly representing thoughts effectively.

Works Independently: Managed projects without direct supervision and/or instruction.

Works Well with Others: Interacted and achieved a common goal with a small group of people for a specific task, project or goal.

Writing Skills: Wrote proficiently and efficiently without spelling, grammar, or comprehension errors. May have specific experience with constitutions, legislation/policy development, research, grants, etc.

Transcript of Academic Record

Student No: N03532483
Record Of: Shahnoor Khan
DOB: 19 - Nov

State University of New York
College at New Paltz
1 Hawk Drive
New Paltz, New York 12561
(845) 257-3100
Date Issued: 12/27/2020

Issued To:

SHAHNOOR KHAN

78 PHILLIPSBURG RD
GOSHEN NY 10924-6910

Degree Number: 1
Degree Awarded: Bachelor of Arts 20-MAY-2020

Program : Bachelor of Arts
College : Liberal Arts and Science
Major : International Relations
Major : Political Science
Dept. Honors : Honors Program
Inst. Honors : Magna Cum Laude

SUB NO.	COURSE TITLE	CRED	GRD	R	PTS
---------	--------------	------	-----	---	-----

Events for Undergraduate Level:
Honors Community Serv Complete
Honors Thesis Complete

Degree Number: 1
Degree Awarded: Bachelor of Arts 20-MAY-2020

Program : Bachelor of Arts
College : Liberal Arts and Science
Major : International Relations
Major : Political Science
Dept. Honors : Honors Program
Inst. Honors : Magna Cum Laude

TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:

Fall 2016 Orange CC-NY
FRN 301 Advanced French I 3 TC+
Fall 2017 Advanced Placement
ENG 160 AP English Lang & Composition 3 AP
HIS 200 AP World History 4 AP
HIS 214 AP European History 4 AP
HIS 222 AP United States History 4 AP

Summer 2018 Orange CC-NY
ECO 207 Intro To Macroeconomics 3 TA-

Transfer Hours Accepted:
2-Year 4-Year AP Total
6 0 15 21

SUB NO.	COURSE TITLE	CRED	GRD	R	PTS
---------	--------------	------	-----	---	-----

Institution Information Continued:

INSTITUTION CREDIT:

Fall 2017

ECO 206	Principles of Microeconomics	3	U*		.00
ENG 180	Composition II	3	B		9.00
HON 201	The Individual and Society	3	A		12.00
MAT 145	Statistics and Public Policy	3	B+		9.99
POL 227	Intro to International Politics	4	B+		13.32
Semester Ehhrs:		13	QPts:		44.31
GPA-Hrs:		13	GPA:		3.40
Cumulative Ehhrs:		13	QPts:		44.31
GPA-Hrs:		13	GPA:		3.40

Dean's List

Spring 2018

ANT 214	Cultural Anthropology	3	A-		11.01
HIS 379	US Foreign Policy Since 1898	3	A-		11.01
PHY 205	Exploring the Solar System	3	A-		11.01
POL 229	Intro to Comparative Politics	4	A		16.00
THE 209	Live Theatre Experience	3	A		12.00
Semester Ehhrs:		16	QPts:		61.03
GPA-Hrs:		16	GPA:		3.81
Cumulative Ehhrs:		29	QPts:		105.34
GPA-Hrs:		29	GPA:		3.63

Dean's List

Summer 2018

GER 316	Germany Today	3	A		12.00
SOC 350	Intro Human Services	3	A		12.00
Semester Ehhrs:		6	QPts:		24.00
GPA-Hrs:		6	GPA:		4.00
Cumulative Ehhrs:		35	QPts:		129.34
GPA-Hrs:		35	GPA:		3.69

Fall 2018

PHY 206	Exploring the Universe	3	C		6.00
POL 216	American Govt and Politics	4	B		12.00
POL 220	Athens and Jerusalem: Polit. Th	4	A-		14.68
POL 300	Pol Sci Research Methods	4	B+		13.32
POL 494	Fieldwork in Political Science	3	A		12.00
Semester Ehhrs:		18	QPts:		58.00
GPA-Hrs:		18	GPA:		3.22
Cumulative Ehhrs:		53	QPts:		187.34
GPA-Hrs:		53	GPA:		3.53

***** CONTINUED ON NEXT COLUMN *****

***** CONTINUED ON PAGE 2 *****

Stella C Turk

Stella Turk, Registrar

Transcript of Academic Record

Student No: N03532483
Record Of: Shahnoor Khan
DOB: 19 - Nov

State University of New York
College at New Paltz
1 Hawk Drive
New Paltz, New York 12561
(845) 257-3100
Date Issued: 12/27/2020

SUB NO.	COURSE TITLE	CRED	GRD	R	PTS
---------	--------------	------	-----	---	-----

Institution Information Continued:

Spring 2019

POL 317	The American Judiciary	3	A		12.00
POL 366	American Foreign Policy	3	A-		11.01
POL 370	United Nations Semester	6	A-		22.02
POL 495	Indep Study in Pol Science	3	B		9.00
REL 275	Islam: An Introduction	3	A		12.00
Semester EhRs: 18		QPts: 66.03			
GPA-Hrs: 18		GPA: 3.66			
Cumulative EhRs: 71		QPts: 253.37			
GPA-Hrs: 71		GPA: 3.56			

Dean's List

Fall 2019

ECO 401	International Trade / Finance	3	A		12.00
HON 393	Admin. Agencies Gov.	3	A		12.00
POL 350	Introduction to Law	3	A-		11.01
POL 495	Indep Study in Pol Science	3	A		12.00
Semester EhRs: 12		QPts: 47.01			
GPA-Hrs: 12		GPA: 3.91			
Cumulative EhRs: 83		QPts: 300.38			
GPA-Hrs: 83		GPA: 3.61			

Dean's List

Spring 2020

GEO 494	Fieldwork in Geography	3	A		12.00
HON 495	Honors Program Ind Study	3	A		12.00
POL 320	Protest Movements	3	A		12.00
POL 401	Seminar Amer Govt Politics	4	P		.00
THE 209	Live Theatre Experience	3	A		12.00
Semester EhRs: 16		QPts: 48.00			
GPA-Hrs: 12		GPA: 4.00			
Cumulative EhRs: 99		QPts: 348.38			
GPA-Hrs: 95		GPA: 3.66			

Dean's List

***** DEGREE 1 (UNDERGRADUATE) TRANSCRIPT TOTALS *****					
INSTITUTION	EhRs: 99	QPts: 348.38			
	GPA-Hrs: 95	GPA: 3.66			
TRANSFER	EhRs: 21	QPts: .00			
	GPA-Hrs: 0	GPA: .00			
OVERALL	EhRs: 120	QPts: 348.38			
	GPA-Hrs: 95	GPA: 3.66			

***** END OF TRANSCRIPT *****

Stella C Turk

Stella Turk, Registrar

May 31, 2023

The Honorable Judith McCarthy
Charles L. Brieant, Jr. United States Courthouse
300 Quarropas Street, Room 434
White Plains, NY 10601-4150

Dear Judge McCarthy:

I write this recommendation on behalf of Ms. Shahnoor Khan. Shahnoor is intelligent, compassionate, enthusiastic, organized, and committed to task completion. Her work ethic, attention to detail, and legal skills would make her an ideal law clerk.

In Fall 2020, Shahnoor was my Contracts student at American University, Washington College of Law ("AUWCL"). Unlike the traditional 1L Contracts class, which is typically organized around reading and discussing cases, my class, in addition to the case method, employs weekly problem sets that require the students to apply what they have learned to hypothetical fact patterns. Each week, students must complete in writing answers to 2-4 hypothetical problems. Shahnoor's work on these problems was exemplary and showed more effort and thought than most of her classmates. In class, Shahnoor was always on task; she paid attention (even though the class was online that year) and frequently volunteered in class. Each time she speaks, both inside and outside of class, her comments show that she has fully considered all relevant legal issues. Shahnoor received an A- in the class. She takes each assignment incredibly seriously, and she puts her all into everything she does.

I also teach Legal Rhetoric, the first-year legal writing, research, and citation class. Shahnoor was not in my class, but I hold three optional, supplemental program-wide workshops each year: one on citation, one on writing strategies, and one on exam review. Students in other Legal Rhetoric classes (there are approximately 30 sections) may choose to attend these workshops. Shahnoor voluntarily attended each one, once again showing her steadfast commitment to learning her craft. Shahnoor is a well-rounded individual--a pleasure to teach. She is kind and considerate -- an increasing rarity in law students.

I maintained a close relationship with Shahnoor during her second year of law school, as I was the Acting Director of the Legal Rhetoric Program, and Shahnoor serves as a Writing Dean's Fellow. Shahnoor regularly met with 1L students to help them with their writing, and students raved about how useful she was in making them better writers.

As a 3L, Shahnoor was the Editor-in-Chief of the American University Law Review. She excelled in this position, as she maintained a high G.P.A of 3.79. This semester, her last at AUWCL, Shahnoor was a student in my in-person Legal Drafting: Family Law Litigation and Practice seminar. Family Law Drafting is a fast-paced class that simulates real-life family law practice. Students represent multiple "clients" in a variety of family law issues, and they write numerous litigation-based documents, such as discovery, motions, settlement agreements, and complaints. They also do a mock settlement conference and a mock mediation session. Shahnoor earned an A in this class, the highest grade in the class! Once again, she was on task, frequently volunteered, and consistently paid attention. Through the years, I have been very proud and pleased to see how Shahnoor has continued to develop as a writer, student, and future lawyer.

Shahnoor is one of the most well-grounded law students that I have ever met. Shahnoor takes her schedule in stride, confidently and competently performing each role without sacrificing humor, humility, or academic success.

No matter her ultimate specialty, Shahnoor has the academic, organizational, and personal skills to succeed in any endeavor. Based on her performance in two of my classes, I am confident that you would be gaining an asset by hiring Shahnoor as a law clerk. Please let me know if I can be of further assistance, as I have nothing but positive things to say about Shahnoor.

Very truly yours,

THE AMERICAN UNIVERSITY
WASHINGTON COLLEGE OF LAW

David H. Spratt
Associate Director, Legal Rhetoric Program
Professor of Legal Rhetoric

David Spratt - dspratt@wcl.american.edu - 202-274-4059



U.S. Department of Homeland Security
Transportation Security Administration
6595 Springfield Center Drive
Springfield, Virginia 20598

May 3, 2023

To Whom It May Concern:

It is my pleasure to provide a letter of recommendation for Shahnoor Khan for inclusion in her Federal Clerkship application with your office.

During the late spring and summer of 2021, Shahnoor participated in the Department of Homeland Security, Transportation Security Administration, Chief Counsel summer intern program. While serving as an intern, she worked directly for me, conducting research and drafting opinions on a wide variety of issues. Shahnoor proved herself to be extremely hard-working and diligent. She conducted herself with an extraordinary level of professionalism, maturity and judgment.

Shahnoor exhibited a remarkable ability to grasp complex and often novel legal matters. This was evidenced by her ability to issue-spot and conduct thorough legal research subsequently used both by me and my clients. Her legal opinions were concise, well written, and organized in a manner easily utilized by the intended audience. I received positive feedback from my clients about her advice and input on a variety of legal matters related to the TSA mission.

For example, Shahnoor conducted research and provided insightful analysis on novel legal issues related to the use of canines by the government in both an administrative and criminal context. Her legal brief helped inform my recommendations to the agency with regard to use of these assets. Her contribution to this effort will have national implications for the agency.

I highly recommend Shahnoor Khan for a Federal Clerkship. I would be happy to further discuss her qualifications based on the incredibly positive experience I had with her during her internship. Please do not hesitate to contact me at the email or number below.

A handwritten signature in black ink, appearing to read "B. Weitz", is located below the main body of the letter.

Bellanne Markizon Weitz
Assistant Chief Counsel, acting
Chief Counsel's Office
Transportation Security Administration
202-821-3576
Bellanne.Weitz@tsa.dhs.gov



October 24, 2022

Dear Judge:

I am writing this letter on behalf of Shahnoor Khan's application to serve as a law clerk in your chambers. Shahnoor was a student in my Appellate Advocacy course in the fall of 2021. Based on my interactions with Shahnoor, I recommend her for a clerkship with you.

My Appellate Advocacy course introduces students to appellate processes, procedures, and structures, including written and oral advocacy and judicial decision-making in federal appellate courts. As part of the course, the students learn about federal appellate courts' design, rules, and jurisdiction; doctrines governing access to federal appellate courts; and the standards and scope of review these courts use.

For this course, students write a brief on a pending case in a federal appellate court, observe and write an analysis of the oral argument in that case, and present an oral argument based on a different pending federal appellate case. Through the students' class participation and performance on the written assignments and oral argument, I develop a good sense for their interest in clerking and their ability to perform the responsibilities of a law clerk.

Shahnoor was a strong student in my Appellate Advocacy class. She was one of the most effective contributors to our class discussions, regularly offering insightful comments about both oral and written approaches to advocacy in appellate courts. Shahnoor also did an excellent job in her oral argument, showing a clear command of the legal issues in the case and an ability to present them clearly, concisely, and persuasively. Throughout our course, Shahnoor demonstrated a deep interest in how federal courts work and, in our discussions, an eagerness to learn more by serving as a law clerk.

Based on her performance in my course, I believe that Shahnoor would be a strong addition to your chambers and that you would enjoy working with her.

If I can be of any further assistance or answer any questions, please do not hesitate to reach out to me at 202-885-2164 or sethg@american.edu.

Sincerely,

Seth Grossman

Seth Grossman

Professorial Lecturer
Vice President of People and External Affairs &
Counselor to the President
American University

May 31, 2023

The Honorable Judith McCarthy
Charles L. Brieant, Jr. United States Courthouse
300 Quarropas Street, Room 434
White Plains, NY 10601-4150

Dear Judge McCarthy:

Please accept this letter as a ringing endorsement of Shahnoor Khan's application to be a judicial clerk in your office.

Shahnoor Khan is a bright student with a quick mind and a willingness to work. In her 1L year she was a student in my Legal Rhetoric class. I found her to be an excellent writer and a team player. Because of her ability to deal with people and the quality of her legal writing, in my capacity as manager of the Dean's Fellows (Teaching Assistants) for our Legal Rhetoric Program, I hired her as one of only four new Writing Fellows for 2L year. In that role she held up to thirty twenty-minute, one-on-one sessions per week with 1Ls to help them with their writing, structured legal analysis, legal research, and citation. She did very well, and I hired her again for her 3L year.

Shahnoor is solid, reliable, and trustworthy. She has a positive attitude, an excellent sense of humor, and the ability to work well with others. She is tough and welcomes a challenge. Her ability and acumen have been recognized by her peers. She was chosen to be a member of the Moot Court Honor Society and as Editor in Chief of the American University Law Review, on whose Board I serve. I am confident she will be a very successful attorney.

For fifteen years I was a Deputy Director in the Civil Division of the U.S. Department of Justice. We employed lawyers from the very best schools in the country, many of whom had been clerks for federal circuit and district court judges. Shahnoor Khan compares favorably with those lawyers. I believe she will be a thorough, reliable, and highly valued law clerk. I also like her very much on a personal level. I strongly recommend her to you.

Please call me if you have any questions.

Sincerely,
Paul Figley
Professor of Rhetoric,
American University, Washington College of Law

Paul Figley - pfigley@wcl.american.edu - 202-274-4316



AMERICAN UNIVERSITY

WASHINGTON COLLEGE OF LAW

Roger A. Fairfax, Dean

May 31, 2023

Re: Clerkship Application of Shahnoor Khan

Dear Judge McCarthy:

I am the Dean of the American University Washington College of Law, and I write to recommend 3L Shahnoor Khan for a clerkship in your chambers. Shahnoor is my research assistant, and she is currently the Editor-in-Chief of the *American University Law Review*.

Shahnoor has completed several research assignments on various topics related to criminal procedure and criminal justice policy. Shahnoor's work product is consistently helpful and accurate. Her writing is lucid and concise, and her research is thorough.

Shahnoor also exhibits creativity of analysis; without prompting, she often contributes valuable insight on the broader research project while completing her more narrow assigned research tasks. Furthermore, Shahnoor displays strong organization and focus. In addition, Shahnoor is a pleasure to work with, and brought her quiet energy and work ethic to every research task.

Shahnoor has had an extraordinary law school career here at the American University Washington College of Law. She serves as Editor-in-Chief of the *American University Law Review*, a tremendous honor entailing broad responsibility for project management and the oversight of the editing of legal scholarship. It goes without saying that being elected to the top position of the flagship law review on campus reflects the esteem in which she is held by her peers, and her demonstrated commitment to excellence.

At the same time, Shahnoor has been an outstanding student during her time here at AUWCL. She reports a cumulative grade point average of 3.79, and a rank in the top 10% of the

WASHINGTON COLLEGE OF LAW
4300 NEBRASKA AVENUE, NW WASHINGTON, DC 20016-8192
202-274-4007

Shahnoor Khan, page 2 of 2

class. She received the highest grade designation in her Criminal Law class. Her strong academic performance led to her being selected as a Teaching Assistant for the Criminal Law course.

Shahnoor also has distinguished herself in her other extracurricular pursuits, including service as a Dean's Writing Fellow for AUWCL's Legal Research and Writing Program, a Research Assistant to Professor Bec Hamilton, Co-Director of the Wechsler National First Amendment Competition through the Moot Court Honor Society. She also has been active in both the Women's Law Association and the Muslim Law Students Association.

In addition, Shahnoor has had a number of impressive and valuable work experiences, including with the U.S. Department of Justice Office of Legal Policy, and the U.S. Department of Homeland Security. She was a summer associate with Ropes & Gray LLP during her second summer of law school and received an offer to return as an associate at that prestigious firm after graduation. Shahnoor's substantial and relevant work experience will no doubt enhance her ability to make a valuable contribution in your chambers.

Shahnoor's academic and extracurricular record, demonstrated research and writing skills, and valuable experience all position her well to hit the ground running and to serve as a trusted and valued law clerk in your chambers. I recommend Shahnoor highly, and I hope that her application receives the most serious consideration.

Thank you for your consideration of this letter. Please do not hesitate to contact me at rogerfairfax@wcl.american.edu, if there is any further information I can provide.

Sincerely,



Roger A. Fairfax, Jr.
Dean and Professor of Law

WASHINGTON COLLEGE OF LAW
4300 NEBRASKA AVENUE, NW WASHINGTON, DC 20016-8192
202-274-4007

SHAHNOOR KHAN

New York, NY • (917) 565 7906 • shahnoor.khan@student.american.edu • linkedin.com/in/shahnoorkhan

The following writing sample is an appellate brief seeking to reverse a Rule 50(a) motion for Judgment as a Matter of Law, written for my Spring 2021 Legal Research and Writing course. While I wrote many briefs and memoranda during my legal experiences at the United States Department of Justice, and the Department of Homeland Security, my supervisors have prohibited me from sharing any written material from those offices. Therefore, this is the only brief from my law school career that I am permitted to share.

In this fictitious case, Kerry Leighton, the Appellant, owned an ice cream business. The business offered factory tours for private events. Earnest MacMillan, the Appellee, hosted his child's birthday party at the ice cream parlor and was dissatisfied with his factory tour; he left a very poor and inaccurate Yelp review. Ms. Leighton accordingly initiated a defamation action. I represented the Appellants, Kerry Leighton, and the Frozen Cow. This was a partnered assignment, and each of us focused on one of the major issues. I covered the first issue, which was whether Mr. Macmillan's statement was protected by the First Amendment to the United States Constitution. The sub-issues that arose were whether Macmillan's statement was factually true, and whether Macmillan's statement was a non-actionable opinion. I have omitted from the sample all sections of the document that I did not solely write. Accordingly, to reduce the length of the document, the table of authorities, statement of jurisdiction, statement of the case, and my partner's topic areas have been omitted.

(sample begins on the next page)

Very Respectfully,



Shahnoor Khan

STATEMENT OF THE ISSUES

- I. Under the First Amendment, is Mr. Macmillan's statement factually true, when it asserted that the tour was poorly planned, lacked flavor development, and was rudimentary at best, considering its verifiability, effect on readers, and presence of hidden negative facts?
- II. Under the First Amendment, does Mr. Macmillan's statement constitute an actionable opinion, when it asserted that the tour was poorly planned, lacked flavor development, and was rudimentary at best, considering that it may have implied negative facts, such as that Ms. Leighton does not produce high quality ice cream?

ARGUMENT

STANDARD OF REVIEW

In the Colorado District Court, a Rule 50(a) motion for a judgment as a matter of law is granted only where the proof is so overwhelmingly preponderant in favor of the movant as to permit no other rational conclusion. Fed. R. Civ. P. 50(a); *Sandoval v. Unum Life Ins. Co. of Am.*, No. 17-cv-0644, 2019 U.S. Dist. LEXIS 70891 at 2 (D. Colo. Apr. 26, 2019). Appellate courts review de novo a district court's decision to grant or deny a Rule 50(a) motion for judgment as a matter of law, applying the same standards as the district court. *Elm Ridge Expl. Co., LLC v. Engle*, 721 F.3d 1199, 1216 (10th Cir. 2007).

- I. **The District Court erred in granting the Motion for Judgment as a Matter of Law, because Mr. Macmillan's statement is not protected by the First Amendment; the statement is not protected, because it is neither factually true nor a non-actionable opinion.**

The First Amendment protects factually true and non-actionable opinions that do not contain more than minor inaccuracies. *Milkovich v. Lorain J. Co.*, 497 U.S. 1, 9 (1990). The first

issue pertains to whether Mr. Macmillan's statement is factually true, and factors to consider include verifiability and effect on readers as compared to the truth. The second issue asks whether Mr. Macmillan's statement is a non-actionable opinion, and factors such as the presence of negative implications or its perception as an opinion will be considered.

A. Mr. Macmillan's statement is not factually true, because it is verifiable as false and contains inaccuracies that would leave a different impact on the reader than the plainly stated truth would.

A statement is factually true when it is verifiable, and any minor inaccuracies that it contains would not leave a different effect on the reader than that of the plainly stated truth. *See Masson v. New Yorker Mag. Inc.*, 501 U.S. 496, 523 (1991); *Milkovich*, 497 U.S. at 9; *Brokers' Choice of Am., Inc. v. NBC Universal, Inc.*, 861 F.3d 1081, 1134 (10th Cir. 2017); *Keohane v. Stewart*, 882 P.2d 1293, 1300 (Colo. 1994).

If a statement is factually true, then it is verifiable and can be proven or disproven. In *Milkovich*, an editorial implied that the plaintiff, a high school coach (private figure), lied under oath. 497 U.S. at 9. The Supreme Court held that verifiability refers to whether an utterance is capable of proof or disproof. *Id.* at 22 (reversing and remanding summary judgment for the defendant journal). The Supreme Court of Colorado addressed the issue in *Keohane*, where the defendant city councilman asserted that the plaintiff-judge was involved in a criminal conspiracy, which is why the judge did not recuse himself in a sexual assault case. 882 P.2d at 1300 (holding that the councilman's statements were actionable as defamatory). The court found that the assertions were verifiable, because they could be proven as true or false upon an investigation. *Id.* Conversely, in *NBC Subsidiary (KCNC-TV) v. Living Will Ctr.*, the defendant broadcasting company aired a medical ethicist's opinion on living will packets and their fiduciary value. 879 P.2d 6, 12 (Colo. 1994). The ethicist's statements included the phrases "I

think” and “not worth paying for.” *Id.* at 8. The court found that these statements were not verifiable, because they were too vague to be proven or disproven as true. *Id.* at 15 (ordering summary judgment for NBC).

A statement is factually true when any minor inaccuracies that it contains do not leave a different effect on the reader than the plainly stated truth would. In *Broker’s Choice*, a television program exposed the allegedly deceptive practices of insurance agents preying on senior citizens. 861 F.3d at 1134. The court affirmed the case’s dismissal and established that an untrue statement would have a different effect on the reader than the pleaded truth would. *Id.* (holding that because the allegations were not false, they would not leave a different effect on an objective reader than the truth would). In *Anderson v. Colo. Mountain News Media Co.*, a newspaper published statements about “schemes” that the plaintiff’s late husband had been involved with. No. 18-CV-02934-CMA-STV, 2019 WL 6888275, at *1, *8 (D. Colo. Dec. 19, 2019). The court held that the necessary inquiry was whether the challenged statement produced a different effect on the reader than that which the literal truth would have. *Id.* (dismissing two claims for negligence while upholding two claims for defamation as a matter for trial). In *SG Int. I Ltd v. Kolbensschlag*, an environmental activist was sued for stating that the plaintiff mining corporation colluded with its lessors. 452 P.3d 3, 8 (Colo. App. 2019). The court found that the defendant’s statements were factually true because any minor inaccuracies contained therein would not render a different effect on an objective reader than the literal truth would have. *Id.* (affirming summary judgment for the defendant). In *Masson*, a magazine altered and published remarks made by the plaintiff during an interview regarding his interests in Freudian psychology. 501 U.S. at 502. The Court held that minor inaccuracies do not render a statement factually untrue,

because such inaccuracies do not leave a different impression on objective readers than the literal truth does. *Id.* at 523 (reversing summary judgment for the magazine and remanding).

Mr. Macmillan's statement was not factually true, because it could be proven to be false. In *Milkovich*, the defendant's editorial implied that the plaintiff broke a law. 497 U.S. at 22. Like in *Milkovich*, where an investigation could have verified the accuracy of the defendant's statement, such an inquiry would also prove the inaccuracy of Mr. Macmillan's statement; the court could investigate into the appellant's planning process for the tour and find that it was not poorly planned, contrary to Mr. Macmillan's assertion. *Id.*; R. at 13 (Leighton's Test.). Likewise, in *Keohane*, the councilman's allegations that the plaintiff was involved in a conspiracy to not recuse himself from a sexual assault case were capable of being verified upon an investigation, which is also how Mr. Macmillan's statements could be disproven. 882 P.2d at 1293. During an inquiry into the planning process, the appellant could prove that countless hours were devoted to the planning and execution of The Frozen Cow Factory Tour, contrary to Mr. Macmillan's assertion. R. at 13 (Leighton's Test.). This is dissimilar from the ethicist's statements in *NBC Subsidiary*, which used the phrase "I think," and lacked any type of specific or factual assertion. 879 P.2d at 8 (holding that the statements were too vague to be actionable). Unlike the ethicist's statements in *NBC Subsidiary*, Mr. Macmillan's statements attacked specific elements of the factory tour and its execution. *Id.*; R. at 4 (Compl. ¶ 8), 7 (Answer ¶ 8).

Mr. Macmillan's statement is not factually true, because its inaccuracies leave a different impression on readers than the plainly stated truth would. Unlike in *Broker's Choice*, where the demonstration of deceptive practices by insurance agents did not leave a different impression on viewers than the truth would have, Mr. Macmillan's statements lead a reader to believe that the factory tour was poorly planned and executed; this impression is different from the truth, because

the truth would give readers the impression that a significant amount of time was dedicated to developing The Frozen Cow Factory Tour. 861 F.3d at 1081; R. at 13 (Leighton’s Test). Likewise, in *Anderson* the court held that statements regarding the plaintiff’s late husband’s “schemes” and business practices had to render a different conclusion by readers as opposed to the literal truth in order to be untrue. 2019 WL 6888275 at *6. Applying the court’s inquiry from *Anderson* here demonstrates that the impression left by Mr. Macmillan’s statement was different from the truth, which is that the tour was not poorly planned or executed. Id.; R. at 13, (Leighton’s Test.), 24 (Johnson’s Test.). Unlike in *SG Ints. Ltd.*, where the defendant activist’s statements about the mining corporation’s collusion were true, because they did not leave a different impression on readers, Mr. Macmillan’s statements could not be true, because they leave a different impression on readers than the truth would. 452 P.3d at 8; R. at 14 (Leighton’s Test.), 24 (Johnson’s Test.). In *Masson*, where a magazine altered the plaintiff’s statements regarding his interests in Freudian psychology, the Court held that the alterations could leave a different impact on readers than the plainly stated truth. 501 U.S. at 525. Like the defendant in *Masson*, Mr. Macmillan’s statement contains inaccuracies that leave a more negative impression on readers than the truth would. Id.; R. at 13 (Leighton’s Test.), 22 (Johnson’s Test.). Based on Mr. Macmillan’s statement, a reasonable reader would take his business elsewhere; whereas if that reader were presented with the truth, he would learn that The Frozen Cow is committed to producing high quality ice cream and is dedicated to flavor development and expansion.

B. Mr. Macmillan’s statement is not a non-actionable opinion, because it would not reasonably be understood as an opinion, and it implies hidden negative facts.

A statement is a non-actionable opinion if it is reasonably understood as an opinion or if it does not imply hidden negative facts. *See Air Wis. Airlines Corp. v. Hoeper*, 571 U.S. 237, 256 (2014); *Bundren v. Parriott*, No. 06–3270, 2007 WL 2405258, at *1, *7 (10th Cir. Aug. 24,

2007); *Jefferson City Sch. Dist. No. R-1 v. Moody's Inv.'s Serv.*, 175 F.3d 848, 856 (10th Cir. 1999); *Gordon v. Boyles*, 99 P.3d 75, 81 (Colo. App. 2004).

A statement is a non-actionable opinion if it is reasonably perceived to be an opinion by objective readers. In *Gordon*, a police officer sued a talk show for statements made on air about the officer's alleged marital and professional misconduct. 99 P.3d at 78. The court noted that because the opinion was asserted as fact, and reasonable listeners could have concluded who specifically the statement was about, the opinion would have been actionable had it been untrue. *Id.* at 82 (affirming summary judgment for the defendants only because the plaintiff failed to show that the opinion was factually inaccurate); *see also Nat'l Ass'n. of Letter Carriers v. Austin*, 418 U.S. 264, 271 (1974) (holding that statements meant to be protected by the First Amendment are those that cannot reasonably be interpreted as stating actual facts). Conversely, in *Keohane*, where the defendant councilman's assertions were capable of being verified, the court held that the latter part of the inquiry dealt with whether a reasonable person would believe the defendant's assertion to be a fact or an opinion. 882 P.3d at 1304. The court reasoned that because an objective listener could have reasonably perceived the councilman's claims about the plaintiff judge to be factual, the plaintiff had a legitimate claim to be addressed at trial. *Id.* at 1305. In *Jefferson*, a school district sued a bond rating service for comments regarding the trustworthiness of the school's bonds. 175 F.3d at 850. The court analyzed the phrasing, context, medium, and surrounding circumstances of the statement. *Id.* The court held that because the statements were clearly expressed as the service's opinion, the service had not been hired by the school to evaluate the bonds, and did not personally invest in the bonds, the statements would clearly be understood as opinions to objective readers. *Id.* at 860. Similarly, in *Bundren*, Dr. Bundren filed suit against Dr. Parriott for statements that the latter made in an expert report.

2007 WL 2405258, at *7. The court of appeals granted summary judgment to the defendant, Dr. Parriott, because the statements were clearly asserted as opinions in the matter of an expert witness' report. *Id.*

A statement is a non-actionable opinion if it does not imply hidden negative facts. In *Broker's Choice*, where the defendant broadcasting company aired footage and statements regarding the plaintiff insurance company's practices and seminar, the court found that the program was not actionable, in part because it did not make any hidden implications as to the plaintiff's conduct. 861 F.3d at 1081 (affirming the lower court's grant of the motion to dismiss). Likewise, in *SG Int. Ltd. I*, where the defendant activist made negative statements about the plaintiff mining company, the court held that because there were no hidden allegations or implications within the statement, it constituted a non-actionable opinion. 452 P.3d at 8 (holding that in order for a statement to be actionable, the hidden implications must have harmed the plaintiff's reputation). Similarly, in *Air Wisconsin*, the Supreme Court examined statements made by a defendant airline employee and held that the harm in defamation law arises from the effects on the plaintiff's reputation that result from the statement's negative implications. 571 U.S. at 252. The defendant employee alleged that the plaintiff was disorderly and armed in an airport, and the Court held that based on the plaintiff's own admitted behavior, the defendant's statement did not contain the necessary hidden implications. *Id.* at 256. In *Ollman*, a professor filed suit against columnists who alleged that he was rejected from a department position because of his socialist views. 750 F.2d at 971. The court found that the statements did not imply any negative facts, and that they expressly asserted facts that the plaintiff had already publicly acknowledged his association with. *Id.* at 988.

Mr. Macmillan's statement is not a non-actionable opinion, because it would not reasonably be perceived to be an opinion by objective readers. Mr. Macmillan's statement is unlike the one in *Gordon*, where but for the statement's accuracy, the defendant's opinion would have been actionable, because it was asserted as fact, and listeners could have easily concluded who the statements were referring to. 99 P.3d at 82. This is dissimilar from Mr. Macmillan's statement because his statement can be proven as factually inaccurate; therefore, because objective readers could clearly conclude who Mr. Macmillan's statement was about and perceived it to be true, it is actionable. R. at 4 (Compl. ¶ 14), 8 (Answer ¶ 14). Mr. Macmillan's statement mentioned The Frozen Cow by name, and any reader could reasonably perceive his statement to be factual. *Id.* Like in *Keohane*, where the defendant councilman made negative statements about the plaintiff, Mr. Macmillan asserted specific and negative things about The Frozen Cow. *Id.*; 882 P.3d at 1304. In *Keohane*, the court held that the defendant's statement could reasonably have been perceived as fact by objective listeners because of the specificity and surrounding circumstances. 882 P.3d at 1305. Likewise, Mr. Macmillan's allegations could reasonably be perceived as facts by readers because of his specificity and personal experience with the factory tour. R. at 4 (Compl. ¶ 14), 8 (Answer ¶ 14). Unlike in *Jefferson*, where the defendant bond rating service had no personal experience with the plaintiff school and expressly advertised its statement as an opinion, Mr. Macmillan told readers about his experience at the factory tour and never posted that his statements indicated an opinion, rather than a fact. *Id.*; 175 F.3d at 860. Unlike in *Bundren*, where the defendant physician literally prepared the report that was the subject of the suit as part of his expert opinion in order to testify as a witness, Mr. Macmillan never indicated that his statements were a matter of opinion, rather than fact. 2007 WL 2405258, at *7; R. at 4 (Compl. ¶ 14), 8 (Answer ¶ 14).

Mr. Macmillan's statement is not a non-actionable opinion because it implies hidden negative facts. The statements made in *Broker's Choice* were not actionable because they openly documented the truth regarding the insurance company's practices and made no implications as to any other matter. 861 F.3d at 1081. This is dissimilar from Mr. Macmillan's statement, because although he expressly attacked the appellant's business, he also implied that her ice cream making skills are limited, meaning that she fails to provide high quality ice cream to her clients. R. at 4, 5 (Compl. ¶¶ 16-17). Unlike in *SG Ints. Ltd. I*, where the defendant's statement constituted factually true allegations about the plaintiff mining company and did not contain negative implications, Mr. Macmillan's statements allege falsities; he implies that the plaintiff misrepresented the nature of the ice cream tour, and that her website is inaccurate. 452 P.3d at 8; R. at 4 (Compl. ¶ 14), 8 (Answer ¶ 14). In *Air Wisconsin*, the plaintiff expressly exhibited certain behaviors at an airport, which were reported to a government agency. 571 U.S. at 256. Unlike in *Air Wisconsin*, where the plaintiff's public conduct caused the defendant to make statements, Ms. Leighton was not Mr. Macmillan's tour guide, nor did she misrepresent the nature of the tour online. *Id.*; R. at 5 (Compl. ¶ 19), 17 (Leighton's Test.). Unlike in *Ollman*, where the plaintiff professor previously acknowledged his political affiliation, which was published in the defendant columnists' newspaper, Ms. Leighton has never affirmed the truth of Mr. Macmillan's statements. 750 F.2d at 988 (holding that because the plaintiff affirmed the truth of the columnists' statements, they were not actionable); R. at 14 (Leighton's Test). Mr. Macmillan's statement is not a non-actionable opinion because it would not reasonably be understood as an opinion, and it implies hidden negative facts.

Applicant Details

First Name **Daniel**
 Middle Initial **T**
 Last Name **McCarthy**
 Citizenship Status **U. S. Citizen**
 Email Address dtm222@cornell.edu

Address

Address
Street
3 Court Sq #809
City
Long Island City
State/Territory
New York
Zip
11101
Country
United States

Contact Phone Number **6313321750**

Applicant Education

BA/BS From **State University of New York-Stony Brook**
 Date of BA/BS **May 2017**
 JD/LLB From **Cornell Law School**
<http://www.lawschool.cornell.edu>
 Date of JD/LLB **May 30, 2021**
 Class Rank **30%**
 Law Review/Journal **Yes**
 Journal(s) **Legal Information Institute: Supreme Court Bulletin**
Cornell International Law Journal
 Moot Court Experience **Yes**
 Moot Court Name(s) **2021 Faust F. Rossi Moot Court Competition**

Bar Admission

Admission(s) **New York**

Prior Judicial Experience

Judicial Internships/ Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Sherwin, Emily
els36@cornell.edu
607-255-1922
Callery, Joseph
joseph.callery@ag.ny.gov
3154484800

Penalver, Eduardo
scottmo@seattleu.edu
206-296-1891

Weinick, Erik
eweinick@otterbourg.com
(212) 905-3672

References

Erik B. Weinick
Otterbourg P.C. - Member
Telephone: (212) 905-3672
Email: eweinick@otterbourg.com

Emily L. Sherwin
Cornell Law School - Professor of Law
Telephone: (607) 255-1922
Email: els36@cornell.edu

Eduardo M. Peñalver
Cornell Law School - Former Allan R. Tessler Dean and Professor of
Law (now President of Seattle University)
Telephone: (206) 296-1891
Email: eduardo@seattleu.edu

Joseph Callery

New York State Office of the Attorney General - Assistant Attorney
General

Telephone: (315) 448-4880

Email: Joseph.Callery@ag.ny.gov

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**